S. HRG. 98-764

AUTOMOBILE ODOMETER MODIFICATION

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 1407

TO PROTECT PURCHASERS OF USED AUTOMOBILES FROM FRAUDULENT PRACTICES ASSOCIATED WITH AUTOMOBILE ODOMETER MODIFICATIONS, AND FOR OTHER PURPOSES

APRIL 12, 1984

Serial No. 98-74

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

34-720 O WASHINGTON : 1984

S261-43

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

BOB PACKWOOD, Oregon, *Chairman*

BARRY GOLDWATER, Arizona	ERNEST F. HOLLINGS, South Carolina
JOHN C. DANFORTH, Missouri	RUSSELL B. LONG, Louisiana
NANCY LANDON KASSEBAUM, Kansas	DANIEL K. INOUYE, Hawaii
LARRY PRESSLER, South Dakota	WENDELL H. FORD, Kentucky
SLADE GORTON, Washington	DONALD W. RIEGLE, JR., Michigan
TED STEVENS, Alaska	J. JAMES EXON, Nebraska
BOB KASTEN, Wisconsin	HOWELL HEFLIN, Alabama
PAUL S. TRIBLE, JR., Virginia	FRANK R. LAUTENBERG, New Jersey

GERALD J. KOVACH, *Chief Counsel*
RALPH B. EVERETT, *Minority Chief Counsel*

SUBCOMMITTEE ON SURFACE TRANSPORTATION

JOHN C. DANFORTH, Missouri, *Chairman*

LARRY PRESSLER, South Dakota	RUSSELL B. LONG, Louisiana
NANCY LANDON KASSEBAUM, Kansas	DONALD W. RIEGLE, JR., Michigan
BOB KASTEN, Wisconsin	J. JAMES EXON, Nebraska

CONTENTS

	Page
Opening statement by Senator Danforth	1
Opening statement by Senator Exon	1
Opening statement by Senator Hollings	2
Test of S. 1407	3

LIST OF WITNESSES

Claybrook, Joan, president, Public Citizen, accompanied by William Schultz, senior attorney, Public Citizen Litigation Group	34
Prepared statement	42
Gunn, C. C., chairman, Government Relations Committee, National Automobile Dealers Association; John L. Sullivan, executive vice president, and Michael O'Daniel, legislative affairs chairman, Nebraska New Car Dealers Association; and Pat Fagan, president, Wisconsin Automobile and Truck Dealers Association	11
Prepared statement of Mr. Gunn	13
Prepared statement of Mr. Sullivan	17
Prepared statement of Mr. Fagan	30
Steed, Hon. Diane, Administrator, National Highway Traffic Safety Administration, accompanied by George Parker, Associate Director for Enforcement, and Richard Morris, Chief, Odometer Fraud Staff	6
Prepared statement	9

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Bardell, Donald J., executive director, American Association of Motor Vehicle Administrators, letter of April 23, 1984	45
Nicholson, Charles, chairman, NIADA Odometer Committee, National Independent Automobile Dealers Association, letter of April 25, 1984	46

AUTOMOBILE ODOMETER MODIFICATIONS

THURSDAY, APRIL 12, 1984

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room SR-253, Russell Senate Office Building, Hon. John C. Danforth (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Karen Phillips, professional staff member; and Loretta Dunn, minority staff counsel.

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. This morning the Surface Transportation Subcommittee will investigate odometer tampering. This type of fraud is very lucrative, and the risk of getting caught is minimal. Odometer rollbacks are worth anywhere from $600 to $1,200 per car, leading to annual costs to American consumers of roughly $2 billion.

The current Federal law addresses this problem, and many States have taken steps to further combat this fraud. However, more needs to be done to close the loopholes that still exist in the law. S. 1407 was introduced last year by Senator Exon as a means of combating the odometer tampering problem. We will be hearing testimony today about this bill and about various other alternatives to deal with this major consumer fraud.

Senator Exon.

OPENING STATEMENT BY SENATOR EXON

Senator EXON. Mr. Chairman, thank you very much. I want to thank you for scheduling these hearings today on S. 1407 which, as you said, I introduced last year. Earlier this morning, some of us had an opportunity to view a videotape of what I believe to be a very telling example, but only one isolated example, but still a very big one with regard to the widespread nature of the problem of odometer tampering, as well as the costs to the consuming public.

Mr. Chairman, I share with you the concerns for the stamping of identifying marks on key parts of automobiles as consumer protection. I think once we get in and fully understand the depth of the problem we are dealing with here, though, it makes our efforts in some of these other things pale by comparison to the seriousness of this problem.

Still, Mr. Chairman, this is a consumer protection bill in the best sense of that term, and I hope that members of both the subcommittee and the full committee will agree that this growing problem must be addressed in order to save consumers literally millions of dollars each year.

Officials in my State of Nebraska have indicated to me that odometer fraud is costing Nebraskans alone—and I emphasize Nebraskans alone—some $5 to $10 million annually. They are trying to create a record from which the odometer tampering can be traced and the violators prosecuted. Some might say this is an area which is best left to the control of the States.

Indeed, there are many areas where the Federal Government should not be involved, but odometer fraud is clearly a problem of truly national scope, dealing with interstate commerce, which is clearly a Federal responsibility.

Moreover, many State governments and associations have already been enacting legislation dealing with odometer fraud. I am very proud to say that Nebraska is among the leaders in identifying the problems in this area, taking action to protect consumers. Last year, Nebraska hosted an eight-State Midwest regional odometer fraud conference. In addition, Nebraska's attorney general established an 11-member task force on odometer fraud with the Nebraska New Car Dealers Association, who we will be hearing from here a little later this morning.

Finally, Nebraska's Legislature has just passed legislation prohibiting title laundering and tampering, and has increased the cost of auto titles to provide the State justice department with funds to check and do something about odometer fraud.

Mr. Chairman, again I want to thank you for holding a hearing, which I believe will give the subcommittee the necessary information and input with which to expeditiously move forward on this important matter.

I thank the chairman.

Senator DANFORTH. Thank you, Senator Exon.

Senator Hollings has an opening statement which will be placed in the record.

[The statement and bill follow:]

OPENING STATEMENT BY SENATOR HOLLINGS

I commend the Chairman of the Surface Transportation Subcommittee, Senator Danforth, for his prompt scheduling of this hearing. I would also like to note Senator Exon's leadership in this very important matter.

The bill under discussion today, S. 1407, is intended to protect purchasers of used automobiles from fraudulent practices associated with automobile odometer modifications. Odometer tampering is an easy thing to do and, if undetected, can be very lucrative. The National Highway Traffic Safety Administration (NHTSA) estimates that odometer fraud costs consumers over two billion dollars annually.

Since 1973, NHTSA has required that all sellers of used cars provide written disclosure of the odometer reading to buyers at the time of sale. Often, that disclosure is on a separate sheet of paper that is given to the buyer. S. 1407 would integrate the odometer statement into the process for registration and titling of used cars, and is intended to create a record from which odometer tampering can be traced and violators prosecuted.

A number of witnesses are scheduled to testify who are able to provide the Committee with more information on the problem and to offer solutions based on real experience in the titling and registration process. I am sure the Committee will benefit from their expertise.

II

98TH CONGRESS
1ST SESSION

S. 1407

To protect purchasers of used automobiles from fraudulent practices associated with automobile odometer modifications, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 6, 1983

Mr. EXON introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To protect purchasers of used automobiles from fraudulent practices associated with automobile odometer modifications, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

AMENDMENT OF MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

SECTION 1. Section 408 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988) is amended by adding the following new subsection at the end thereof:

"(d)(1) No motor vehicle the ownership of which is transferred by any person to another person in interstate

commerce may be registered or licensed for use in any State, or used in interstate commerce, unless—

"(A) the application to the State by the new owner of such motor vehicle for a certificate of title is accompanied by the prior owner's most recent registration card for such motor vehicle; and

"(B) the certificate of title (or other document indicating ownership) of such motor vehicle which is issued by the State to the new owner following such transfer—

"(i) is printed in bank note intaglio printing process, and

"(ii) indicates on its face the mileage required to be disclosed by the transferor under subsection (a).

"(2) No registration card may be issued in any State for any motor vehicle used in interstate commerce unless—

"(A) the application for such registration card contains the information specified in paragraphs (1) and (2) of subsection (a), determined as of the date on which such application is submitted by the owner of the motor vehicle; and

"(B) such registration card contains such information, as provided on such application.".

EFFECTIVE DATE

SEC. 2. (a) Section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988), as added by the first section of this Act, shall apply with respect to motor vehicles (as defined in the Motor Vehicle Information and Cost Savings Act) which are transferred after the date six months after the date of the enactment of this Act.

(b) Section 408(d)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988), as added by the first section of this Act, shall apply with respect to motor vehicles (as defined in the Motor Vehicle Information and Cost Savings Act) which are registered in any State after the date six months after the date of the enactment of this Act.

34-720 O—84——2

Senator DANFORTH. The first witness is Diane Steed, who is the Administrator of the National Highway Traffic Safety Administration.

STATEMENT OF HON. DIANE K. STEED, ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, ACCOMPANIED BY GEORGE PARKER, ASSOCIATE DIRECTOR FOR ENFORCEMENT, AND RICHARD MORRIS, CHIEF, ODOMETER FRAUD STAFF

Ms. STEED. Thank you, Senator

Mr. Chairman, Senator Exon, we are very pleased to appear before you today to discuss our views on odometer fraud. With me today are George Parker, who is our Associate Administrator for Enforcement, and Mr. Dick Morris, who is the Chief of the Odometer Fraud Staff.

Let me start by saying that the department is strongly interested in measures to control this costly fraud, and I believe it is timely that the Congress is looking into this this year. Congress enacted the Federal odometer law in 1972 to control fraud that seemed beyond the reach of the States acting individually. I wish I could come before you today and say that that law has totally succeeded in its purpose.

Unfortunately, I cannot do that, despite hundreds of investigations by us and by the State and despite numerous guilty pleas and thousands of dollars in fines. The testimony you will hear today will support our impression that as many odometers are being reset today as were being reset before the law.

There are many reasons for this state of affairs, but the underlying cause is the enormous profitability of odometer fraud. Taking thousands of miles off of an odometer, a job that takes only a few minutes, can increase the market value of a car by hundreds of dollars. We estimate that the average wholesale price increase for a car with an altered odometer is about $750. The prospect of such easy profit is so tempting that among some categories of used cars, such as leased cars, 9 out of 10 are altered before being sold to retail customers.

The annual cost to consumers, we believe and estimate, exceeds $2 billion.

Today's hearing comes at a time of renewed interest in methods to control odometer fraud. The National Automobile Dealers Association and the Independent Automobile Dealers Association have both indicated to us their strong interest in controlling the problem. Last December, the NADA board of directors passed a resolution expressing support for enforcement and urging a variety of new antifraud measures. Within the last 6 months, we have participated in meetings involving manufacturers, dealers, and auctions, as well as Federal and State law enforcement officials. The sense of these meetings is that there are steps that each of us can take to help reduce odometer fraud.

For our part, the Department has just submitted to the Congress a draft bill that would increase the criminal penalties for odometer fraud from a misdemeanor with a 1-year maximum sentence to a felony with a 3-year maximum sentence. After many discussions

with the Department of Justice and with concerned law enforcement officials at all levels, we have concluded that the present penalty for odometer fraud simply does not present an effective deterrent.

Because of heavy felony case loads, misdemeanors are often not investigated. In cases where convictions are obtained, the sentences are very short. The experience of jurisdictions where odometer fraud is a felony shows the much greater effect of a felony with its longer sentence, its impact on the violator's ability to retain his business, and its effect on his civil rights.

The Department of Justice supports our bill. We believe that it is the simplest and most effective change that can be made in the Federal law and that it will enable us to marshall significantly greater enforcement effort against odometer fraud.

There are steps that others can and should take. There is no question but that odometer fraud is facilitated by the failure of several States to require odometer readings on their titles. This makes it easy to mail a title with high mileage to another person in one of these States, and to obtain in return, at a very nominal cost, the new title, washed clean of any odometer information, and then to reset the odometer to a lower figure.

We have encouraged these States to amend their procedures to include odometer information, both on the face of the title and on the back, where dealer reassignments are usually recorded.

In those States whose titles include odometer readings, the effectiveness of these readings depends on the diligence of the State in insuring the forms are properly executed. With the vast number of used vehicles that are sold every year, on the order of 40 million, with the high volume of paperwork that each titling office has to process, the States must take extra precautions to prevent gaps or false readings on these titles. Some States have allowed the mileage to be routinely recorded as unknown, to the confusion of subsequent purchasers of those autos.

In working with the States, we have seen increasing cooperation among them and a growing awareness that they must all include odometer readings on their titles. The list of States without odometer readings is steadily shrinking. In just the last year, six States have revised their titles, leaving only six States and the District of Columbia without some provision for odometer readings on their titles. We expect the list to shrink further, as it becomes apparent to the remaining States that they are being used as laundromats to wash titles soiled by the high odometer readings.

It remains to be seen whether the last six States will make the needed changes, but there is significant pressure on them to do so from the States that presently require odometer information. In anticipation that they will respond to these pressures, the administration is taking no position on S. 1407 at this time. We believe the practice at which the bill is aimed should be stopped, and that titles for used cars should not be issued unless they contain an accurate odometer reading, but we prefer to see this result accomplished by the States themselves.

We believe that laws that derive from the States' own experience gives them a greater stake in the enforcement of those laws. However, because our experience suggests that a significant amount of

odometer fraud will continue so long as any State remains open to title washing, we would be willing to reexamine our position on S. 1407, if the current momentum subsides.

In conclusion, I again want to encourage the committee to increase the criminal penalties for odometer fraud, in keeping with the administration's bill. We are convinced that such penalties will have an immediate and positive effect on the enforcement of the law.

That concludes my statement. If you have any questions, I will be happy to try and answer them at this point.

Senator DANFORTH. Thank you very much.

In 1982, a rulemaking was canceled that would have required auto manufacturers to develop odometers that were tamperproof, or that indicated that there had been a tampering.

The cost estimated of such a change in odometers was about $1 a car, or if there were 10 million car sales, $10 million. If, as you cite, the cost of tampering with odometers to the American people is $2 billion, that would be a 200-to-1 ratio. That would be quite an investment, I would think.

It would seem to me that the best way to proceed would be simply to develop odometers that could not be tampered with.

Ms. STEED. If that could be done, Senator, that is one approach that we would consider. When we looked at that rule, however, we felt that the mechanical solution that was proposed by that regulation would really not have stopped odometer tampering. It might have deterred some individuals who want to roll their odometers back. It might have stopped the small dealer, who occasionally feels that he can get a better deal by rolling the odometer back, but it would not have stopped the professional odometer rollback that is going on in great numbers in this country.

Senator DANFORTH. In other words, you think it cannot be done? You think that the state of the art is not such that you could develop an odometer which is tamperproof?

Ms. STEED. Yes; that is what our experts tell me. At this point, it simply cannot be done mechanically.

Senator DANFORTH. And that is the reason for the withdrawal of the rulemaking?

Ms. STEED. Yes; we felt that it would not have effectively accomplished its purpose, so we felt it would be better to go at the problem through stricter enforcement.

Senator DANFORTH. It is not that the auto companies—as usual—did not want it?

Ms. STEED. No, sir; it is not.

Senator DANFORTH. Odometer tampering is difficult to detect; is it not, right now?

Ms. STEED. Relatively, difficult to detect.

Senator DANFORTH. If it is difficult to detect, what good does it do to increase the penalty for successful prosecution from a misdemeanor to a felony? It seems to me that that would not do the job.

Ms. STEED. Well, we spend a lot of time and effort, as do the States, developing these cases to be prosecuted, then we give them to the Justice Department. Because they have such a heavy caseload, and other more important felonies, the U.S. attorneys tell us,

that, if there is mail fraud or another more important crime involved, they will be happy to prosecute for it.

We feel, and they feel, that if those penalties are increased to a felony, they would be much more interested and much more vigorous in their prosecution.

In States that have done this, we see a significant deterrent to odometer fraud. Florida is the best example.

Senator DANFORTH. Thank you.

Senator Exon.

Senator EXON. Just one question, Ms. Steed.

I guess that one of the shortcomings that was discovered with the tamperproof odometer was that you have a situation where I have a car, and the odometer quits working; I have got to have some way to get that fixed. To have that loophole, then, I guess would be almost impossible to have an odometer—if you could never remove one, then you could never get one fixed when it went bad. I guess what they would do, even under—even if we had a tamperproof odometer, they could put in a whole odometer, and it would be more expensive than just turning the odometer back, but it would accomplish the same end. Right?

Ms. STEED. In fact, we see that happening today. Yes, sir.

Senator EXON. I have no further questions. Thank you.

Senator DANFORTH. Thank you, Diane.

Ms. STEED. You are welcome.

[The statement follows:]

STATEMENT OF HON. DIANE K. STEED, ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Mr. Chairman, distinguished members of the Subcommittee, I am pleased to be here to discuss the views of the National Highway Traffic Safety Administration (NHTSA) on odometer fraud. Accompanying me is George Parker, the Associate Administrator for Enforcement.

Let me begin by expressing the Department's strong interest in new measures to control this costly fraud. I believe it is timely for Congress to examine the available alternatives.

Congress enacted the Federal odometer law in 1972 to control a fraud that seemed beyond the reach of the States acting individually. I wish I could tell you that the law has succeeded in its purpose. It has not. Despite hundreds of investigations by us and by the States, and despite numerous guilty pleas and thousands of dollars in fines, the testimony you hear today will support our impression that as many odometers are being reset today as before the law.

There are many reasons for this state of affairs, but the underlying cause is the enormous profitability of odometer fraud. Taking thousands of miles off an odometer—a job of a few minutes—can increase the market value of a car by hundreds of dollars. We estimate that the average wholesale price increase for a car with an altered odometer is $750.00. The prospect of such easy profit is so tempting that among some categories of used cars, such as leased cars, nine out of ten cars are altered before being sold to retail customers. The annual cost to consumers exceeds two billion dollars.

Today's hearing comes at a time of renewed interest in methods to control odometer fraud. The National Automobile Dealers Association (NADA) and the Independent Automobile Dealers Assocation (IADA) have both indicated their strong interest in controlling the problem. Last December, the NADA board of directors passed a resolution expressing support for vigorous enforcement and urging a variety of new anti-fraud measures. Within the last six months, we have participated in meetings involving manufacturers, dealers, and auctions as well as Federal and State law enforcement officials. The sense of these meetings is that there are steps that each of us can take to help reduce odometer fraud.

For our part, the Department of Transportation has just submitted to the Congress a draft bill that would increase the criminal penalties for odometer fraud from

a misdemeanor with a one-year maximum sentence to a felony with a three-year maximum sentence. After discussions with the Department of Justice and concerned law enforcement officials at all levels, we have concluded that the present penalty simply does not present a deterrent. Because of heavy felony case loads, misdemeanors are not often investigated. In the cases where convictions are obtained, the sentences are short. The expericence of jurisdictions where odometer fraud is a felony shows the much greater effect of a felony, with its longer sentence, its impact on the violator's ability to retain his business, and its effect on his civil rights.

The Department of Justice supports our bill. We believe that is is the simplest and most effective change that can be made in the Federal law and that it will enable us to marshall significantly greater enforcement effort against odometer fraud.

There are steps that others can, and should, take. There is no question but that odometer fraud is facilitated by the failure of several States to require odometer mileage on their titles. This makes it easy for a person to mail a title with high mileage to another person in one of these States and to obtain in return, at nominal cost, a new title washed clean of any odometer information, and then to reset the odometer to a lower figure. We have encouraged these States to amend their procedures to include odometer information both on the face of the title and on the back, where the dealer reassignments are usually recorded.

In those States whose titles included odometer readings, the effectiveness of these readings depends on the diligence of the State in insuring that the forms are properly executed. With the vast numbers of used vehicles that are sold each year, on the order of 40 million, and with the high volume that each titling office has to process, the States must take extra precautions to prevent gaps or false readings on the titles. Some States have allowed the mileage to be routinely recorded as "unknown", to the confusion of subsequent purchasers.

In working with the States, we have seen increasing cooperation among them and a growing awareness that they must all include odometer readings on their titles. The list of States without odometer readings is steadily shrinking. In just the last year, six States have revised their titles, leaving only 6 States and the District of Columbia without some provision for odometer readings on their titles. We expect the list to shrink further, as it becomes apparent to the remaining States that they are being used as laundromats to wash titles soiled by high odometer readings.

It remains to be seen whether the last States will make the needed changes, but there is significant pressure on them to do so from the States that presently require odometer information. In anticipation that they will respond to these pressures, the Administration is taking no positioon on S. 1407 at this time. We agree that the practices at which the bill is aimed should be stopped, and that titles for used cars should not be issued unless they contain an accurate odometer reading, but we would prefer to see this result accomplished by the States themselves. We believe that laws that derive from the States' own experience give them a greater stake in the enforcement of such laws. However, because our experience suggests that a significant amount of odometer fraud will continue as long as any State remains open to title washing, we would be willing to reexamine our position on S. 1407, if the current mementum subsides.

In conclusion, I again want to encourage the committee to increase the criminal penalties for odometer fraud, in keeping with the Administration's bill. I am convinced that such penalties will have an immediate and positive effect on the enforcement of the law.

This concludes my prepared statement. If you have any questions, I would be glad to try to answer them at this time.

Senator DANFORTH. Next, we have a panel, consisting of Mr. C. C. Gunn, of the National Automobile Dealers Association; Mr. John Sullivan, Nebraska New Car Dealers Association; and Pat Fagan, Wisconsin Automobile and Truck Dealers Association.

Senator EXON. Mr. Chairman, I would like to have with this panel Mike O'Daniel, a key automobile dealer from Omaha, Nebr., sit with this panel. I have some questions I would like to ask him, if that is satisfactory.

Senator DANFORTH. Good.

Senator EXON. Would all four of you please come forward, then? Mike, just pull one of those chairs at the table over.

Mr. Chairman, if I might, just briefly. The two Nebraskans here are men that I worked with for a long, long time. Mike O'Daniel, sitting on the left, is a very prominent, well-known automobile dealer from Omaha, Nebr. He and his father have been in business there almost from the start of the automobile in that great city of ours, and has had a great deal of experience from the side of the dealer, and now this has hurt them.

His primary support of this measure that I have introduced is to protect the public from consumer fraud, so it is a consumer issue with him.

John Sullivan is the former assistant to the Governor of Nebraska during the 1970's, was the motor vehicle director for the Governor of Nebraska during the 1970's, and is now the executive director of the Nebraska New Car Dealers Association. That group has been a prime mover in coming up with the idea and the concept of the bill that I introduced.

Thank you.

Senator DANFORTH. Thank you.

Mr. Gunn, would you like to start?

STATEMENTS OF C. C. GUNN, CHAIRMAN, GOVERNMENTAL RELATIONS COMMITTEE, NATIONAL AUTOMOBILE DEALERS ASSOCIATION; JOHN L. SULLIVAN, EXECUTIVE VICE PRESIDENT, AND MICHAEL O'DANIEL, LEGISLATIVE AFFAIRS CHAIRMAN, NEBRASKA NEW CAR DEALERS ASSOCIATION; AND PAT FAGAN, PRESIDENT, WISCONSIN AUTOMOBILE AND TRUCK DEALERS ASSOCIATION

Mr. GUNN. Mr. Chairman and members of the committee, my name is C. C. Gunn. I am chairman of the government relations committee of the National Automobile Dealers Association. I am also a franchised new car dealer from San Antonio, Tex.

On behalf of NADA's 18,400 franchised new car and truck dealers, I would like to express our appreciation for the opportunity to testify before you today on S. 1407.

With the permission of the committee, I would like to have my written statement included in the record, and orally summarize my testimony.

Senator DANFORTH. Fine. That will be done automatically, and if all witnesses would simply abbreviate their testimony, we will include, automatically, the full statements in the record.

Mr. GUNN. Odometer rollback is one of the most costly frauds being perpetrated on the American consumer today. It is costing many consumers hundreds of dollars per purchase. The National Highway Traffic Safety Administration estimates the cost to consumers in excess of $2 billion. This amount is an average cost to consumers of approximately $750 per car in cases where the odometer has been rolled back. Because of the difficulty in identifying odometers which have been rolled back, and the number of cars which are affected, the total cost to consumers must be even greater.

It has been estimated that over 3 million used cars sold annually have had their odometers rolled back, with an average rollback per car of 30,000 miles. On November 27, 1983, "60 Minutes" provided

a segment on odometer fraud. In the segment, Mike Wallace interviewed an unidentified man who demonstrated the process of rolling back an odometer. It requires no special skills or tools. In fact, a tool fashioned from a coat hanger is usually adequate to do the job. The man indicated that he will make at least $50 for the rollbacks, and he is capable of doing 50 to 75 per day.

Inasmuch as odometer rollback is so very lucrative, and the risk of getting caught is so remote, it is not surprising that the practice is extremely widespread and growing each year.

As we have mentioned, in addition to being lucrative, the practice is extremely difficult to detect. Current law requires written disclosure of the odometer reading to be provided to the transferee at the time of transfer of ownership. Federal law does not, however, dictate the form in which the disclosure must be made. It is our understanding that in a majority of these cases, odometer disclosure is made on a separate piece of paper and handed to the buyer. In such cases, the buyer can simply destroy the disclosure paper, roll the odometer back, and prepare a new disclosure for the next buyer which discloses the odometer reading as rolled back.

As we understand the matter, one area in which rollback frequently occurs involves cars which have been sold through such mass sales techniques such as auctions. Wholesalers typically buy large quantities of cars at auctions to sell to other wholesalers or other dealers. One car often goes through several auctions, wholesalers, or to dealers before it is sold to consumers. The cars often travel across State lines, and somewhere along the way, the odometer is rolled back. Because of the route the car has taken, it is difficult, if not impossible, to determine the point at which the odometer was spun.

In cases where the wholesaler engages in this practice, the first thing he does after buying the car is to roll the odometer. The second step is to require supporting paperwork. As we have mentioned, in most cases the odometer disclosure is made on a separate sheet of paper accompanying the title. In such instances, the wholesaler merely alters the odometer reading and provides an entirely new disclosure. In cases where the title incorporates the odometer reading, a different tactic is used. It is necessary to assure that the disclosure matches the rolled-back odometer. The wholesaler can attempt to alter the existing title or launder it completely.

A common laundering technique is to title a car in a State which does not require an odometer reading on the title. To accomplish this, a person can merely send the information, together with a check, to a business associate in another State, who will have the car retitled. The car never moves. The new title is returned without any reference to an odometer reading. By the time the car reaches the used car dealer, the odometer has been spun, and the odometer disclosure will correspond to the reading on the rolled-back odometer. The dealer sells the car to a consumer in good faith, but the consumer, in reality, ends up paying an excessive amount for the car because it has been driven many more miles than are indicated on the odometer.

Mr. Chairman, in our written statement, we have summarized the provisions of S. 1407 and have made a suggestion that a slight

alteration be made to clarify that the odometer disclosure must actually be made on the title certificate. A number of States have already incorporated many of these requirements into their State law, but in order for these requirements to be effective, we must have uniformity in all States.

In the interest of time, I will not repeat our written statement, but will be happy to try and answer any questions you would have.

[The statement follows:]

STATEMENT OF C. C. GUNN, CHAIRMAN, GOVERNMENTAL RELATIONS COMMITTEE, NATIONAL AUTOMOBILE DEALERS ASSOCIATION

Mr. Chairman and members of the committee: My name is C. C. Gunn and I am chairman of the Governmental Relations Committee of the National Automobile Dealers Association (NADA). I am also a franchised new car dealer from San Antonio, Texas. Accompanying me today is Tom Greene, the executive director of legislative affairs for NADA. On behalf of NADA's 18,400 franchised new car and truck dealers, I would like to express our appreciation for the opportunity to testify on S. 1407, a bill designed to protect purchasers of used automobiles from fraudulent practices associated with odometer tampering.

Simply put, odometer rollback is one of the most costly frauds being perpetrated on the American consumer today. It is costing many consumers hundreds of dollars per purchase. The National Highway Traffic Safety Administration (NHTSA) estimates the cost to consumers to be in excess of $2 billion dollars annually. This amounts to an average cost to consumers of approximately $750 dollars per car in cases where the odometer has been rolled back. Because of the difficulty in identifying odometers which have been rolled back and the number of cars which are affected, the total cost to consumers may be even greater.

It has been estimated that over 3 million used cars sold annually have had their odometers rolled back. The average rollback, per car, is 30,000 miles. On November 27, 1983, 60 minutes provided a segment on odometer fraud. In the segment Mike Wallace interviewed an unidentified man who demonstrated the process of rolling back an odometer. It requires no special skills or tools. In fact, a tool fashioned from a coat hanger is usually adequate to do the job. The man indicated that he will make at least $50 dollars for the rollback and that he can do 50–75 odometers per day. The rolled back odometer provides between $700 and $1200 dollars in profit to the seller. Inasmuch as odometer rollback is so very lucrative, and the risk of getting caught is so remote, it is not surprising that the practice is extremely widespread and growing each year.

As we have mentioned, in addition to being lucrative, the practice is extremely difficult to detect. Current law requires written disclosure of the odometer reading to be provided to the transferee at the time of transfer of ownership of a vehicle. Federal law does not, however, dictate the form in which disclosure must be made. It is our understanding that in a majority of the cases odometer disclosure is made on a separate piece of paper and handed to the buyer. In such cases the buyer can simply destroy the disclosure paper, roll the odometer and prepare a new disclosure for the next buyer which discloses the odometer reading as rolled back.

As we understand the matter, one area in which rollback frequently occurs involves cars which have been sold through such mass sales techniques as auctions. Wholesalers typically buy large quantities of cars at auctions to sell to other wholesalers or to dealers. One car often goes through several auctions, wholesalers or to dealers before it is sold to a consumer. The cars often travel across State lines and somewhere along the way, the odometer is rolled back. Because of the circuitous route the car has taken, it is difficult, if not impossible, to determine the point at which the odometer was spun.

In cases where the wholesaler engages in this practice, the first thing he does after buying the car is to roll back the odometer. The second step is to acquire supporting paperwork. As we have mentioned, in most cases, the odometer disclosure is made on a separate sheet of paper accompanying the title which complies with current disclosure law. In such instances, the wholesaler merely alters the odometer reading or provides an entirely new disclosure. In cases where the title incorporates the odometer reading, a different technique becomes necessary to assure that the disclosure matches the rolled back odometer. The wholesaler can attempt to alter the existing title or launder it completely. A common laundering technique is to title the car in a State which does not require an odometer reading on the title. To

accomplish this a person can merely send the information, together with a check to a business associate in another State, who will have the car retitled. The car never moves. The new title is returned without any reference to an odometer reading. The wholesaler is then free to disclose the odometer reading of his choice. The cars are then ready for sale. By the time the car reaches a used car dealer, the odometer has been spun, and the odometer disclosure will correspond to the reading on the rolled back odometer. The dealer sells the car to a consumer in good faith, but the consumer, in reality, ends up paying an excessive amount for the car because it has been driven many more miles than are indicated on the odometer.

S. 1407 is an attempt to create a record which would allow a consumer to be better informed regarding the true mileage on a used vehicle. In addition, this record would create a mechanism through which odometer tampering can be traced, and violators can be prosecuted. In the first place, the bill requires that annual applications for registration must include an odometer reading. The State, in turn, must take this odometer reading and print it on the new registration card. The bill then requires that following the sale of a vehicle from one person to another, the vehicle cannot be licensed or registered in a State unless the seller discloses the true odometer reading as of the date of sale and the application for title by the new owner is accompanied by the prior owner's most recent registration card. The certificate of title issued by the State to the new owner must include the odometer reading as disclosed on the transferred title and be printed on the face of the title. In order to avoid forgery and alteration of the title, the title must be printed in the bank note intaglio printing process. The bank note intaglio printing process has built-in security features which make alterations of any type detectable. Other security features may work equally as well as bank note intaglio printing, but since many States already use this method of providing secure titles, it was thought that this would being a desirable element of uniformity to the State automobile titling process. If this would create a hardship for some States, the committee might consider the use of bank note intaglio printing or "such other method of providing a secure title as is approved by the Secretary of Transportation."

In the bill, as it is currently written, there is an ambiguity as to whether the disclosure is required to be made on the title certificate at the time of transfer. We strongly support the position that the disclosure should actually be made on the title in order to prevent destruction or alteration of the disclosure and we urge the committee to clarify this point in the bill. We will be happy to provide the committee with language that we think will accomplish this objective.

Mr. Chairman, in summary, we feel that S. 1407 will go a long way in solving the problems of odometer tampering. For that reason, we strongly support the bill and urge positive and prompt committee action on this proposal.

Senator DANFORTH. Thank you very much, Mr. Gunn.

Mr. Sullivan?

Mr. SULLIVAN. I would like to defer, for the first part of our testimony, to Mike O'Daniel, if I could, Mr. Senator.

Senator DANFORTH. All right.

Mr. O'DANIEL. Mr. Chairman, members of the committee, in the past few years, there has been an increasing level of complaints from auto dealers and consumers regarding odometer fraud. A year ago, the National Auto Dealers Association asked their dealers to begin working with their State attorney general offices to investigate the magnitude of this crime.

In Nebraska, we formed a task force, commissioned by the attorney general, to study the nature of the crime, the effects on its victims, how to eliminate it. We found spinning odometers in Nebraska to be a thriving business. Over 60,000 titles annually arrive in Nebraska from other States for new Nebraska titles. The States have no means to authenticate the odometer readings on these cars. Most of these cars never go into the States where they are titled.

Thousands of titles are being moved from State to State daily, to disguise previous ownership and true odometer readings. Such activity is called laundering the title. Tiles are being shipped in

boxes, briefcases, in private planes, and cars, and through the postal system. This activity is highly organized and highly profitable. Thousands of these cars are being wholesaled individually and at auctions around the country every week.

The true owner and the true mileage have been hidden through the laundering process. The ultimate victim is the retail consumer. He is the big loser because he pays too much for this misrepresented car, and he begins to pay expensive repairs soon after the purchase.

The existing Federal and State laws to prevent this crime are ineffective. Odometer fraud has become a popular white-collar crime, amounting to a multimillion-dollar industry. This is an embarrassment to all legitimate new- and used-car dealers in the country.

In Nebraska, we have just done something about it, and are encouraging every State to follow our example. We also need stiffer Federal laws to stop this crime. The average used-car buyer is a person who has to budget his income every week. This is why they have to purchase a used car. Every day, hundreds of these people are being cheated out of thousands of dollars in every transaction. These people have little, if any, protection at the point of purchase, and less when they realize they have been stung.

Thank you.

Senator DANFORTH. Thank you, sir.

Mr. Sullivan?

Mr. SULLIVAN. Mr. Chairman and members of the committee, my name is John L. Sullivan. I am executive vice president of Nebraska New Car Dealers Association.

On the plane coming into Washington yesterday, I was sitting next to a young couple from here in Washington, and they said what are you going to be doing in Washington? And we talked a little bit about that. The young man said, did you see the "60 Minutes" expose during the Thanksgiving period on this odometer fraud? And I said, I sure did. He said, is it really that bad, and I said it's worse. It's worse.

Not only is it shocking, but I just do not think we have the understanding that this thing is bigger than armed robbery, and we gear up at the State level and at the Federal level to chase these kind of criminals literally, and get them off the streets. Prosecution, as has been testified here, is nonexistent. In fact, the followup to that "60 Minutes" report—and we see it all the time—to this guy that was caught—he is now down in Florida. They said he was just having a gay old time, and kind of laughed and giggled about it. And he said it is kind of like paying insurance; it is just that the rats move to the next farm.

I think it is sad that there is a lack of uniformity between the various States. We really play into their hands. And as a past motor vehicle director for our State under Governor Exon, I know that we did it, and it is because we have a lack of uniformity that aids and abets these people, and that is why we need some degree of interstate Federal law that I think this bill begins to accomplish.

I would like to emphasize, Senator, that this area of crime can be stopped. They are just not that clever. They are just getting away with it, and we are doing nothing about it. We can stop it.

Let me just quickly tell you what we did in Nebraska because of our task force that was made up of our industry and the State patrol, the industry licensing board, our department of motor vehicles, and our State attorney general.

No. 1—and I believe this is the most sweeping law in the United States, and I honestly believe that if every State would adopt these measures, we would stop them cold in their tracks. We have made, as of Monday—and our Governor signed this into law—odometer fraud in the State of Nebraska has become a felony. It is no longer a misdemeanor, so we are talking about jail time, and we are talking about a serious offense, and telling our prosecutors to go after them. Five years or $10,000.

We established—which I think is the only one in the country—and funded a State prosecution unit within our consumer protection division, taking 50 cents out of every title, to give our consumers some protection and achieve some prosecution, not just have the penalty.

Third, we are requiring that every car that comes into the State of Nebraska from outside Nebraska has to have, as part of its registration and titling procedure, a foreign titled inspection. Several States have done this—I would say five or six or seven, something like that. This stops these criminals, these crooks, at their stock and trade, which is basically title washing. We are making a car match up with the title that is being used.

We estimated that last year, just in Nebraska, that we were being used for cars that were never in the State, were never intended to be in the State, that we processed something like 60,000 titles in a little State like Nebraska. Incredible. And what were they doing? They are out to cheat somebody. We put a stop to that.

The fourth area of our bill that we just passed is to have some regulation of the auto auction, and it is simply because this is a marketplace where the buyers and the sellers come to meet, and it should be a place where—and it is an interstate situation. As you know, Senator, the regional auctions—Kansas City, Omaha, Minnesota, in our region—we just think some minimum regulatory scheme is sensible, is fair, and will not hurt them and, in fact, will make this work better for everyone.

We support Senator Exon's bill, S. 1407. I think this committee is focusing national attention on this terrible faceless crime, but it is a crime. I think the idea of having the paper recommended to the States is something that everybody can comply with, and it will do a great deal to eliminate tampering with this paperwork, and they do it flagrantly, so this would help.

The other element of the bill, of course, requires odometer registration annually. We must track these people, so that you can go back and get book on them, and that is how you get the prosecutions. So we really support S. 1407, and I am kind of surprised that the NHTSA people are neutral on that. In fact, we see this as the vehicle that they should consider strengthening this bill even more as the debate goes on it and the awareness becomes—to make it a felony and to perhaps include some regulation of the auction.

Thank you, Senator.

Senator DANFORTH. Thank you, sir.

[The statement follows:]

STATEMENT OF JOHN L. SULLIVAN, EXECUTIVE VICE PRESIDENT, AND MICHAEL O'DANIEL, LEGISLATIVE AFFAIRS CHAIRMAN, NEBRASKA NEW CAR DEALERS ASSOCIATION

INTRODUCTION

An eleven member task force was appointed by Nebraska Attorney General Paul L. Douglas to study the problem of odometer fraud and to make specific recommendations concerning ways in which to address this major consumer problem. In particular, the task force was directed to:

1. Identify the techniques used in altering or "spinning" odometers;
2. Evaluate existing legislation relating to title documentation, criminal penalties, and regulation of sales of vehicles;
3. Evaluate existing administrative processes and control regarding title documents;
4. Examine current level of law enforcement;
5. Undertake a program of enhanced consumer awareness and consumer education;
6. Submit legislative proposals to deal with the problem.

The Task Force, representing a cross-section of the public, is composed of the following:

Ruth Anne E. Galter, Chairperson, Assistant Attorney General, State of Nebraska.

John L. Sullivan, Vice Chairperson, Executive Vice President, Nebraska New Car & Truck Dealers Association.

W. Richard Baker, Lancaster County Clerk.

Donna Behlen, Consumer Representative.

Lt. Col. J. E. Buist, Assistant Superintendent, Nebraska State Patrol.

Thom Cope, Attorney at Law.

Jim Fagin, News Director, KLIN.

Corinne D. Hays, Investigator, Motor Vehicle Industry Licensing Board, Department of Motor Vehicles.

Thomas J. Jenkins, Attorney at Law.

Michael Knopp, Independent Dealer.

Michael O'Daniel, Franchised Dealer.

SUMMARY OF ACTIVITIES

April 25, 1983.—Task Force Meeting.

Organizational Matters.

Confirmation and Identification of the Depth of the Problem Address: Paul L. Douglas, Attorney General, Nebraska.

May 4–5, 1983.—Participation Midwest Regional Task Force on Odometer Fraud, Omaha, Nebraska.

May 18, 1983.—Task Force Meeting.

Report: LB 234, Title Legislation by William J. Edwards, Deputy Director, Department of Motor Vehicles.

Report and Evaluation: Midwest Regional Task Force on Odometer Fraud by Ken Schliesman, Investigator, Nebraska Motor Vehicle Industry Licensing Board.

Proposals: Consumer awareness, public hearing, general awareness.

INDIVIDUAL ASSIGNMENTS

June 1, 1983.—Press Conference.

Media Briefing On: Task Force Directions.

Midwest Conference on Odometer Fraud, Omaha, Nebraska.

Proposed Resolution to A.A.M.V.A. (American Association of Motor Vehicle Administrators) Region III Conference.

Proposed Funding for Odometer Fraud Investigation and Prosecution Unit (LB 234).

ANNOUNCEMENT OF PUBLIC HEARING

June 5–8, 1983.—A.A.M.V.A. Region III Conference, Sioux Falls, South Dakota.

Presentation: General Session, (Video presentation).

Individuals Participating: John L. Sullivan, Nebraska New Car & Truck Dealers Association; Jerry Wheeler, South Dakota New Car & Truck Dealers Association; Gary Williams, Wisconsin New Car & Truck Dealers Association; and Ruth Anne E. Galter, Assistant Attorney General, State of Nebraska.

INTRODUCTION OF PROPOSED RESOLUTION REGARDING ODOMETER FRAUD

June 15, 1983.—Public Hearing, State Capitol. Presentation of Reports. Public Testimony.

July 14, 1983.—Final Meeting.

CONSUMER EDUCATION

Perhaps the single most important finding is a realization of the enormity of the criminal activity and dollar-loss caused by odometer alterations. Conservative estimates amount to several billion dollars a year in consumer fraud. At the Midwest Regional Conference in Omaha, the nine states participating projected an estimated loss of between seventy and ninety million dollars annually. Further, representatives of the federal government indicated that 93% of the leased vehicles sold in the United States are sold with altered odometers. An estimated consumer loss on these leased vehicles alone was set in excess of two billion dollars annually.

A serious complication is the lack of criminal prosecution. In general, odometer tampering is difficult to prove, the penalties are minor, and the impetus to actively prosecute is woefully absent. Lack of funds, and prosecutorial expertise is cited as a reason for this lapse in enforcement, but lack of consumer awareness of the depth and severity of the problem is a contributing factor. Until the public understands that the extra dollars spent on "spun" vehicles are being siphoned into the pockets of professioanl criminals, little progress will be made. The major focus is not on the "occasional spinner", although that individual must also be deterred and dealt with harshly. Rather, this study has shown that the bulk of criminal activity is traceable to people who literally "make their living" through the marketing of vehicles with altered odometers. The victims are the innocent consumers who are literally helpess on their own to track down the perpetrators, much less seek redress. Therefore, continued consumer education is vital in order to accomplish the following: Appreciation of the magnitude of the problem; Identification of the source of criminal activity; and Legislative action to obtain political and financial support for increased criminal prosecution.

The media has been extremely helpful in focusing attention on odometer fraud. A number of radio and television stations have covered the meetings of this Task Force, as well as the press conferences and public hearings. Several video clips have been obtained, and a composite of these has been made in the form of an 8–10 minute presentation. This was used at both the press conference on June 1, 1983, and at the A.A.M.V.A. Region III Conference in Sioux Falls, South Dakota on June 5, 1983.

Newspaper coverage was also very beneficial as indicated by a few of the following items which have appeared: [1]

ADMINISTRATION

After identifying the nature and source of the problem, the following evaluations and recommendations have been made regarding administrative procedures for dealing with title documents.

I. The odometer statement presented at the time of application for title should be a notarized statement.

The county clerks and their staff are responsible for the processing of applications for certificates of title. These applications, under current statutes, are made under oath and require the applicant's signature to be notarized. An assignment of a title is required to be notarized, but a reassignment by a licensed dealer is not required to be notarized. An application for title must be accompanied by an odometer statement pursuant to Neb.Rev.Stat. Sections 60–2303 and 60–2304, but again, there is no requirement that this document be a sworn statement. Therefore, it is recommended that if a title application is presented to a County Clerk which is otherwise complete, the County Clerk should affix by rubber stamp the following:

SEPARATE NOTARIZED ODOMETER STATEMENT REQUIRED FOR PROCESSING [2]

II. Request the Secretary of State to send a refresher letter to all notaries public on their statutory duties and obligations.

---

[1] Retained in committee files.

[2] Requires legislation.

It is felt that a reminder is necessary for Notaries Public to impress upon them the significance of accurate odometer certification and regularity in title applications. In particular, both Notaries Public and County Clerks should be cautioned against notarizing "open titles", i.e., title documents that are not filled out completely. Also, a Notary should not acknowledge a signature which is not affixed in his or her presence.

III. County clerks should not allow a buyer to fill out an odometer statement without the signature of the seller.

This again is an incidence where County Clerks can assist in preventing abuses by refusing to process incomplete documents. This requirement should apply to individuals as well as dealer transactions.

IV. Consideration should be given to the development of a three-part odometer statement.

Investigation has shown that odometer statements prepared by sellers of vehicles frequently are not used. This is particularly true of vehicles sold at auction where a "second" odometer statement appears with the application for title showing a lower mileage figure. The utilization of a three-part carbon pack odometer statement is recommended to curtail this abuse. One copy would be given to the buyer, one to the seller, and one copy would be retained by the state administrative agency for copy would be retained by the state administrative agency for entry into its computer data bank. Unless fully completed, no title should be issued.

V. Education of county clerks and their staff on the detection of odometer alterations.

Investigation has revealed a number of techniques that are used to alter odometer figures appearing on certificates of title. County Clerks and their staff should be trained to detect figures that are written over or changed. The use of staples to obscure figures is another method of abuse, as are erasures. Many times these alterations are blatant and easily detected. A Clerk should use extra care and diligence in confirming that accurate odometer figures are obtained and should question suspicious documents, and refer the same to the county attorney or to the Attorney General's office for further action.

The above recommendations were presented at the County Clerks Workshop in June in Kearney, Nebraska. Additionally, posters bearing the warning "IT'S A CRIME" (explaining criminal odometer alterations) have been prepared for display in all county courthouses across the state as a reminder to individuals as well as dealers of their criminal liability for falsifying or altering title documents. It is hoped that the increased participation and cooperation of County Clerks and their staff will act as a frontline deterrent to processing false and altered documents. Consideration should also be given to recognizing those individuals who detect alterations, thereby thwarting criminal activity.

LAW ENFORCEMENT

Inquiries were made to the Omaha Police Department, Lincoln Police Department, State Patrol investigators, Motor Vehicle Licensing Board, and the County Attorneys Association regarding their activities in this area, only to find that there is little if any effort directed toward odometer fraud. In fact, the only agency actually instigating investigations in this area is the Motor Vehicle Licensing Board, and then only by two of the five investigators who have that responsibility. The other law enforcement agencies become involved usually as a by-product of other on-going investigations, (i.e., auto theft, title wash, etc.), and then it becomes lost in a maze of other charges.

A determination could not be made of the number of odometer fraud cases County Attorneys have filed on; however, with the obvious lack of investigative effort put forth by the law enforcement agencies, it would not seem to be very many.

Information received at the Midwest Regional Task Force Meeting indicated that the federal system has only four investigators throughout the United States. This lack of interest is reflected in the fact that since federal legislation was passed in 1976, few, if any charges have ever been filed with the U.S. Attorney's Office in Omaha.

As a result of the information received on law enforcement and odometer fraud, the following recommendations are made:

First, it is obvious there is a need for an educational process to enlighten County Clerks, law enforcement, prosecuting attorneys, and the public in general. It would seem to us that the County Clerks are in a good position to identify and alert the proper authorities on odometer fraud. In the most populated counties, it seems that sheer volume prevents a close examination of files and accompanying odometer cer-

tificates, even those with very obvious alterations. All county clerks and their staffs should be encouraged to detect this type of fraud and in turn, should be recognized for their alertness.

The educational concept should then be expanded to include all law enforcement personnel. The core curriculum offered at the recruit level in the four police training centers should reflect this effort as well as specialized in-service training for veteran officers. It is imperative that the law enforcement personnel recognize the consequence of this type of fraud and be trained to recognize and present prosecutable cases to their respective County Attorneys.

With an effective effort put forth by the law enforcement community, it will be necessary to offer educational seminars to the County Attorneys throughout the State. Again, the seriousness of this type of crime should be underlined so that they are willing to make odometer fraud a priority filing in their counties. The new Executive Director of the County Attorneys Association is aware of the Task Force efforts and has agreed to assist in any way he or the Association can to bear pressure on the violators associated with this crime.

The fourth sector we need to educate is the public. We should provide them proper knowledge on what they might encounter when purchasing a car. For instance, they should check to see if the seller is responsible, check on the history of the vehicle with the former owner, etc. A contact at the state level should be provided if they suspect tampering or want to trace the vehicle's odometer history. This suggestion adds impetus for the need for a continuing regionalized task force, if for no other reason than to expedite the verification process in other states.

The foregoing suggestions on education would be complimented if it were possible to:

(1) Improve the paper trail on each vehicle's odometer history. Not only would the issuing County Clerks be held responsible for ensuring the correct mileage, but we should expand the present system to include annual odometer readings at the time of registration. It should be included on the registration itself and become a part of the computerized program that is now available in the Department of Motor Vehicles.

(2) Increase the penalty for section 60-2301 from a Class II misdemeanor to a Class IV felony. This not only reflects the seriousness of the crime, but would also encourage the County Attorneys to file where they have been hesitant to do so up to this time.

(3) A major contributor to the odometer fraud problem seems to be with the auto auctions in all of the states. Nebraska does not have adequate statutory and regulatory framework to control the transfer of vehicles sold at auction, especially in the area of documentation. An effective paper trail would enhance the investigative effort and provide necessary information for the consumer.

(4) Provide input to LR 88 introduced by Senator Landis of the Government, Military and Veterans Committee which deals with the study of existing laws governing the qualification, duties, and powers of notaries public.

"LR 88: Purpose.—The purpose of this resolution is to study the existing laws governing the qualifications, duties and powers of notaries public. A review should be made of the administration of the application procedure, compliance overview, and the adequacy of protection extended to the public in cases of malfeasance by notaries public. The study should include an investigation of amending existing laws so that Nebraska notarial acts will be recognized internationally by use of apostil.

"Specific inquiry should be address to, among other things, the following topics:

"(1) The adequacy of penalties for breach of notarial duties;

"(2) The adequacy of the notary bond amount;

"(3) The examination of applicants;

"(4) A study of model notary acts; and

"(5) The potential of placing notary records, applications, and records on computer files.

"Now, therefore, be it resolved by the members of the eighty-eighth legislature of Nebraska, first session:

"(1) That a committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

"(2) That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

"Referred to the Executive Board."

(5) Encourage the investigator/prosecutor who will be assigned to the Consumer Protection Division of the Attorney General's Office (prosecution unit funded by LB 234) to coordinate intelligence information on known odometer violators with the

regional members of the Task Force and with law enforcement and County Attorneys within the state. We feel that if there is a constant vigil directed toward the problem of odometer fraud, the attention by itself will assist in curbing this activity.

FORMATION OF PROSECUTION UNIT

During the course of the study, the Nebraska Legislature passed LB 234 which deals primarily with the verification of the identity of vehicles at the time of application for title. It requires a visual inspection of vehicles when application for title is made for a vehicle previously titled in another state. This will reduce the practice of title washing. It is estimated that approximately one-half of the seventy thousand foreign vehicles titled in Nebraska last year were not present in this state when applications for title were made. LB 234 also provides for regulation of salvage dealers and imposes recordkeeping requirements on salvage and junked vehicles and also on component parts.

One of the most significant aspects of LB 234, with reference to odometer fraud, is that it funds a prosecution unit within the Attorney General's Consumer Fraud Division to deal solely with the criminal activity in this area. Of the $1.00 increase in the fee for certificates of title, 25 cents of each dollar is allocated to this unit. As indicated earlier in the report regarding law enforcement, the lack of prosecution has allowed professional criminals to practice their trade unfettered by the threat of detection or criminal convictions. The Attorney General's Fraud Division will now have the funding to prosecute criminals on behalf of the state or to assist local county attorneys by providing the investigative techniques and necessary expertise in this area. Closely related is the creation of a computer data bank which will store information regarding odometer discrepancies, sales of altered vehicles, known dealers who traffic in "roll backs" and patterns of criminal activity. (Note: This information will be in a standardized form and will be utilized and accessed by other state and federal agencies to detect interstate activity and movement.)

As indicated above, the ability to communicate with other states is critical. The formation of the Midwest Regional Task Force on Odometer Fraud is a significant step in interstate and federal cooperation. Promulgated by the Nebraska Motor Vehicle Industry Licensing Board, the Regional Task Force will be an ongoing organization. At the meeting on May 4 and 5, 1983, in Omaha, it was recognized that interstate movement of altered vehicles, particularly via auto auctions, represents a significant portion of the criminal activity. Consequently, efforts are being made to implement the exchange and accessibility of standardized information which will facilitate the tracing of both altered vehicles and the individuals responsible for their sale. It is recommended that this effort be fully supported by the Attorney General's Prosecution Unit. Additionally, it is recommended that full cooperation be achieved between that unit and the Department of Motor Vehicles so that access can be had to information presently stored within the Department's data information system.

AUTO AUCTIONS

It is the general consensus of this Task Force that a large proportion of the vehicles sold at auction are sold with altered odometers. The testimony of Mike O'Daniel, Task Force member, at the public hearing on June 15, 1983, reflects the concern regarding this criminal activity.

"It is no surprise that an auto auction offers a great atmosphere in which to sell cars with altered odometers. As at most other auctions, it is a meeting place for buyers and sellers. The auction aa consignor offers this meeting place for a fee.

"As auto dealers sell new cars and take trade-ins as part payment, there is a great need to juggle these trade-ins and turn them into money at some point. How well a dealer does that determines his degree of success or failure as an auto dealer. An auto auction offers a fast means of converting cash into cars you do need. So, I feel that an auto auction is an essential part of our industry. However, as the transactions are fast and furious, and the dollars that circulate are big, this is a great place to cheat and for criminals to go undetected.

"We feel that there are a tremendous number of cars sold weekly across the country through auctions that have altered odometers. Many of these cars go undetected because the ultimate retail buyer is furnished a well-laundered title that disguises the origin of the car and its previous owners.

"Many honest auto dealers are buying these cars and do not know who the real seller is and what the true condition of the car is. Many honest dealers are selling cars they don't need for various reasons and these cars are then conditioned and altered and represented as 'low-mileage' cars and resold to other dealers. An auto auction is the perfect setting to facilitate this crime and the public is paying for it.

"We regulate barbers and real estate people, but far more harm is done by these unscrupulous sellers in the auction houses. We think if we take away the anonymity of the seller, and bond him and license that person through regulation, we can clean up a lot of problems. Let's have the seller or his registered representative be present and identified with that vehicle when it is sold. And, if that licensed person cheats someone by odometer fraud, then he'll not be able to ply his trade further in Nebraska. We can require that the title and the odometer certificate be present and available to the potential buyer to examine when bidding on this car. We can require that any vehicle sold in an auction be sold with a guarantee of complete mechanical soundness and an authentic odometer reading for the day of the sale.

"Or, they may be sold with no representation whatsoever. Thus, the legitimate car will bring its real worth and the illegitimate car will bring a poor price and the profit motive for this crime will vanish.

"I can see a time when a auto auction can become as reliable as a bank and be as popular to their auto-dealer customers as they used to be. I report these findings to all of us here so that we may solicit further suggestions. Our goal is to eliminate the problem with the least amount of interference. Those who say there is no problem should have no problem with the changes we are suggesting."

It is felt that much of the criminal activity is enhanced by a lack of regulation in the preparation and processing of title documents on vehicles sold at auction. Buyers are unaware of the true mileage of a vehicle or the identity of the seller at the time of sale, and have no way of verifying the mileage on a vehicle until several days or weeks later when the actual title document is delivered to the purchaser. By that time, the vehicle may have been transferred (on paper) one or more times prior to reaching the ultimate consumer. If the seller is an out-of-state dealer, it is difficult, if not impossible, to trace the identity of the actual "spinner."

In many instances, the perpetrators of these crimes are out-of-state dealers. Also, these dealers frequently use false or fictitious names and addresses, and tranfer title to vehicles between these entities, thereby obliterating the possibility of tracing the identity of the actual "spinner." While it may not be possible to entirely eliminate this practice, it is recommended that any dealer selling at auction in Nebraska be licensed and regulated by the Nebraska Motor Vehicle Industry Licensing Board. Additionally, these dealers would be required to post a bond so that individuals who are defrauded could seek monetary relief. In the event that an odometer roll back is traced to a particular dealer, the license of such dealer would be revoked and that individual would be prohibited from further sales of vehicles in the State of Nebraska.

The following resolution concerning odometer fraud was presented to the A.A.M.V.A. (American Association of Motor Vehicle Administrators) in Sioux Falls, South Dakota during its Region III Annual Conference, June 5–8, 1983:

"AAMVE REGION III—PROPOSED RESOLUTION

"Re: Odometer fraud, June 6, 1983

"Whereas, various studies and reports to the conclusion that odometer fraud, in the form of false statements made to the purchaser as to the actual mileage of the vehicle and odometer tampering, continues to exist despite the enactment of federal and state legislation designed to deter such fraudulent activity; and

"Whereas, the problem of odometer fraud exists on a national level and should be addressed on that level through uniform regulation and cooperation among state and federal law enforcement and regulatory agencies, elected officials and associations; and

"Whereas, motor vehicle auctions, while providing a needed forum for the sale of used motor vehicles, are often the conduits through which persons who are engaging in odometer tampering reap the benefits of their fraudulent activities;

"Now, therefore, be it resolved that the American Association of Motor Vehicle Administrators (AAMVA) hereby urges each state to adopt and implement as statutory and regulatory framework requiring:

"(1) The utilization of carbon pack odometer certificates at auction sales to provide copies to the seller, buyer, state administrative agency and auction dealer; and

"(2) The availability for inspection by prospective buyers at auctions of all title; documents; and

"(3) The physical presence and identification of the seller or his/her licensed representative prior to the time of the auction sale; and

"(4) The licensing by the appropriate state administrative agency of buyers and sellers at auctions requiring each seller to maintain a minimum bond; and

"(5) The posting of an 'Auction Buyers' Guide' by the seller on all vehicles sold at auction; that said 'Auction Buyers' Guide' include information on a form prescribed by the state administrative agency including certification of previous owners, assignors and odometer certification.

"Be it further resolved that the AAMVA hereby supports the adoption of stricter penalties, both civil and criminal, for acts constituting odometer fraud, and urges the various state and federal regulatory agencies to develop a uniform system for motor vehicle registration, titling and odometer certification; and

"Be it further resolved that the AAMVA hereby supports a nationwide information campaign designed of odometer fraud and the rights and remedies of the defrauded purchaser under existing state and federal law."

A presentation was also made to the general assembly and to several of the A.A.M.V.A. committees by the Task Force chair and vice chairpersons, and by Jerry Wheeler and Gary Williams, Executive Vice Presidents of the New Car & Truck Dealers Associations in South Dakota and Wisconsin, respectively. These presentations and the foregoing proposed resolution received favorable television and newspaper coverage.

Unfortunately, the proposed resolution met heavy resistance from the automobile action industry, and was not adopted by A.A.M.V.A. An ad hoc committee was formed, however, to further consider the problem and to make recommendations to the Association. Articles appearing in subsequent trade publications indicate the industry's reluctance to accept responsibility:

"ODOMETER FRAUD

"Odometer fraud is getting a lot of attention right now all across the land. Rolling back odometers has been taking place for many, many years. Since the early 1970's we have seen state laws enacted to deal with this subject as well as a Federal law. Enforcement, for the most part, has been almost nil.

"Bringing the subject to the forefront the past several months have been members of the news media. We have seen two different films made up of TV news casts on odometer roll backs right here in this area. There are probably countless others throughout the country. This has brought the subject directly to the consumer and has stirred regulatory agencies into action.

"On May 4-5 a Midwest Odometer Task Force met in Omaha. This consisted of law enforcement officers and motor vehilce departments from eight or nine states. In Nebraska, the Attorney General has appointed a task force to investigate odometer fraud as well as offer a means to correct it.

"At the Region III Conference of AAMVA, in Sioux Falls, South Dakota, June 5-8, a Resolution was sent to the floor with a 'do-pass' recommendation that would have placed a severe hardship on auctions. Fortunately, the resolution was defeated but it brough to the forefront the serious problems that lie ahead for the auto auction industry.

"We urge all of you to again read the Resolution adopted by the Board of Directors of NAAA and distributed in poster form to all members. It was the distribution of copies of this Resolution that aided in defeating the above mentioned resolution. We suggest that all members be on guard, especially in regard to enactment of laws that would be a hardship to the auto auction industry. Proponents are using information that all 'roll back' cars are being sold through auto auctions.

"We have only mentioned what has been taking place in a twelve-state area. We are sure the same thing is happening throughout the country. *The Auto Auction*, June 1983, Page 2.

"We are hearing a lot through the news media in regard to odometer roll-backs and how innocent victims are getting 'ripped off' in the purchase of a used car. Since only used cars are eligible for odometer tampering it automatically places the blame on used car dealers.

"We don't need all this publicity. Used car dealers sell less than 20% of all used cars purchased by consumers. Some 50 to 60% are sold by individuals and the balance by franchised dealers.

"It was our own National IADA that first went on record to seek enforcement of present odometer laws. They have enlisted the assistance of the American Association of Motor Vehicle Administrators.

"On the next page is a copy of the Resolution adopted by National IADA.[3] Show this to your suspicious clients and let them know how we stand on odometer rollbacks. *The Nebraska Independent*, June 1983, Page 2."

---

[3] Appendix A.

The chairperson also served as the chairperson of the Legal Services Committee of Region III of the AAMVA. During the conference in Sioux Falls, the following suggestions were obtained from committee members to deal with the problem of odometer fraud:

1. Carbon pack odometer statements.
2. Requirements that the physical title accompany a vehicle sold at auction.
3. Identify the seller at the point of sale (auction).
4. Require the licensing and bonding of both buyers and sellers of vehicles sold at auction.
5. Promulgation of an "auction buyers' guide."
6. Increase penalty for odometer violations to a felony.
7. Creation of a computer data bank to store and access information.
8. Visual inspection of applications on foreign vehicles.
9. Require that all title documents be present and available for inspection at point of sale (auction).
10. Coordination of prosecution efforts among various states.
11. Increased federal prosecution.
12. Adoption of the uniform title and requirement that odometer figures appear on said documents.
13. Require odometer certification at time of registration of vehicles (annually).
14. Creation of a title abstract showing a vehicle's history of ownership.
15. A limitation on the number of possible assignments and reassignments of a certificate of title.
16. Training of county clerks and those officials responsible for the processing of title documents.
17. Increased public awareness and consumer education.
18. Vehicle identification number checks and verifications.
19. Notification of the public of odometer discrepancies.
20. Limitation of time period in which to transfer title.
21. Prohibition of blank titles and assignments.
22. Support of increased funding for prosecution units.
23. Increased enforcement by industry licensing boards.
24. Odometer certification by lessees of vehicles or leases in excess of 30 days.

LEGISLATIVE PROPOSALS

1. Under federal statutes, the Secretary of Transportation is given broad authority to inspect and copy records of transferees of motor vehicles on very short notice. Title 15 U.S.C. Section 1990(d), provides that:

"INSPECTIONS AND INVESTIGATIONS

"Authorization of Secretary; cooperation with State and local officials; power of designated officers or employees to enter, impound, and inspect; compensation for impounding of motor vehicles or equipment.

"(a)(1) The Secretary is authorized to conduct any inspection and investigation necessary to enforce this subchapter or any rules, regulations, or orders issued thereunder. Information obtained indicating noncompliance with this subchapter or any rules, regulations, or orders issued thereunder, may be referred to the Attorney General for investigative consideration. In making investigations under this paragraph, the Secretary shall cooperate with appropriate State and local officials to the greatest extent possible consistent with the purposes of this subsection.

"(2) For purposes of carrying out paragraph (1) of this subsection, officers or employees duly designated by the Secretary, upon stating their purpose and presenting appropriate credentials and written notice (which notice may consist of an administrative inspection warrant) to the owner, operator, or agent in charge, are authorized at reasonable times and in a reasonable manner—

"(A) to enter (i) any factory, warehouse, establishment, or other commercial premises in or on which motor vehicles or items of motor vehicle equipment are manufactured, held for shipment or sale, maintained, or repaired, or (ii) any noncommercial premises in or on which the Secretary reasonably believes that there is a motor vehicle or item of motor vehicle equipment that has been the object of a violation of this subchapter;

"(B) to impound, for a period not to exceed 72 hours, for purposes of inspection, any motor vehicle or item of motor vehicle equipment that the Secretary reasonably believes to have been the object of a violation of this subchapter; and (C) to inspect any factory, warehouse, establishment, premises, vehicle, or equipment referred to in subparagraph (A) or (B) of this paragraph.

"Each inspection or impoundment under this paragraph shall be commenced and completed with reasonable promptness.

"(3) Whenever, under the authority of paragraph (2)(B) of this subsection, the Secretary impounds for the purpose of inspection any motor vehicle (other than a vehicle subject to subchapter II of chapter 105 of Title 49) or any item of motor vehicle equipment, he shall pay reasonable compensation to the owner of such vehicle or equipment to the extent that such inspection or impounding results in the denial of the use of the vehicle or equipment to its owner or in the reduction in value of the vehicle or equipment.

"RECORDING REQUIREMENTS

"(b) For the purpose of enabling the Secretary to determine whether any dealer or distributor has acted or is acting in compliance with this subchapter or any rules, regulations, or orders issued thereunder, each dealer and distributor shall—

"(1) maintain such records as the Secretary may reasonably require to make such determinations;

"(2) permit an officer or employee duly designated by the Secretary, upon request of such officer or employee, to inspect appropriate books, papers, records, and documents relevant to making such determination; and

"(3) provide such officer or employee information from records required to be maintained under this subsection as the Secretary finds necessary for such determination if the Secretary (A) provides the reason or purpose for requiring such information, and (B) identifies to the fullest extent practicable such information.

"Nothing in this subsection authorizes the Secretary to require a dealer or distributor to provide information on a regular periodic basis."

The Task Force recommends that similar legislation be adopted in Nebraska which would grant comparable authority to the Attorney General. In that way, upon reasonable grounds, vehicles and records could be inspected to determine whether or not odometer violations have occurred.

2. Penalties for odometer violations, both actual tampering and false representation of odometer readings, should be increased from misdemeanors to felonies. This will serve two purposes. First, the severity of the penalty will serve as a deterrent if violators are faced with time in prison. Secondly, it will be possible to extradite out-of-state offenders. Because of interstate activity, it is now very difficult, if not impossible, to obtain criminal jurisdiction.

3. Odometer readings should be required each time a vehicle is registered. A statement, under oath, should accompany the application for registration; and the odometer reading should appear on the registration certification. Also, this would apply to the registration of leased vehicles, subject to a lease of 30 days or more, and would be completed by the lessee of the vehicle. Note: A similar law is currently pending at the federal level. H.R. 1320 (Appendix B) was introduced by Congressman John Dingell (D-Michigan, Chairman of the House Energy and Commerce Committee). Additionally, Senator J. James Exon has introduced a comparable bill in the Senate.

4. At the present time, only licensed dealers are required to be bonded in Nebraska. Because of the high percentage of odometer violations occurring on vehicles sold through auctions, it is recommended that *all* dealers selling vehicles at auction in Nebraska be licensed by the Industry Board, and that they be required to post a bond.

Current bonding requirements are contained in Neb. Rev. Stat. Section 60-1419, and require a dealer to furnish a surety bond to insure "that the applicant will faithfully perform all the terms and conditions of said license, . . . that the licensed dealer will fully indemnify any person or other dealer by reason of any loss suffered because of . . . any false or fraudulent representations or deceitful practices . . ." The Nebraska Supreme Court has ruled that the language "any loss suffered" is not broad enough to include an award for attorney fees as provided by federal law or for the federal minimum of $1,500 to a successful plaintiff. *Darr* v. *Long*, 210 Neb. 57, 313 N.W.2d 215 (1981). The rationale is that those amounts are awarded as a penalty, and do not constitute an actual loss. In order to prevail against a bond, an odometer victim must prove actual monetary loss which is very difficult. Further, the cost of attorney fees from such an award is a definite disincentive to the victim-plaintiff. Accordingly, it is recommended that the word "loss" be defined to include a statutory minimum penalty and/or the recovery of costs incurred.

A further consideration in the area of bonding requirements deals with the bond for auction dealers, presently set at $100,000. To the extent that auction dealers and their employees participate in the completion and processing of title applications

and odometer certification, liability should be imposed against the bond for aiding and abetting odometer violations. Courts have held that failure to disclose unknown mileage readings constitutes a reckless disregard for the purpose of the federal odometer law and rises to the level of fraudulent intent. *Kantorczyk* v. *New Stanton Auto Auction, Inc.*, 433 F.Supp. 889 (W.D. Pa. 1977). Accordingly, liability should be imposed for such activity as well as for reckless disregard for the authenticity of title and odometer documents, or the failure to detect obvious and blatant alterations or errors.

5. It is the conclusion of the Task Force that much of the organized criminal activity is concentrated in vehicles that are sold at auction. That is not to say that the auto auctions are directly or solely responsible. However, the ease with which vehicles can be transferred through auctions with little, if any, regulation or enforcement encourages this type of crime. Therefore, in addition to the bonding and licensing requirement discussed previously, the following recommendations are made:

(a) Identification of the seller at the point of sale.

(b) Require all title documents to be available for inspection at time of sale.

(c) Post an "Auction Buyers' Guide" on all vehicles sold at auction which would include information prescribed by the state administrative agency, including previous owners.

(d) Eliminate ability of auction employees to sign title documents for sellers or buyers as transferors and transferees.

6. At the time of this report, twenty-four states have adopted a uniform title. These titles conform to AAMVA's specifications for a uniform title, including size, paper stock, layout and design, ink color and printing method, and may contain an option latent image. The latent image is a method of securing titles, as well as other documents. The horizontal lines, spaces, and the ink texture of the engraving process combine to create a hidden image not readily noticeable. Some have hidden letters in the border of the document. This latent image makes a forged title immediately recognizable to title clerks and administrators.

The documents include other safety features that make duplication or alteration nearly impossible. In New Hampshire, a process is used to reduce pertinent information from the title application, which makes tampering difficult, and prints it on the title. The title itself is also difficult to reproduce or forge. The border is printed with a method called intaglio, incorporating a steel printing plate. The slightly raised printing is also used on currency, stocks, and other secured documents. A.A.M.V.A. bulletin, March, 1983. It is strongly urged that Nebraska join in this effort to bring consistency to this process. While some administrative and economic resitance can be anticipated; it is felt that the consumer benefits would far outweigh any perceived inconvenience, especially given the magnitude of consumer fraud in their area.

7. While considerable emphisis has been placed on auto auction regulation, the Task Force fully urges increased prosecution for *all* violators, whether individuals or dealers. In addition, stronger civil regulation is recommended on the part of the Motor Vehicle Industry Licensing Board, which has "full power to regulate the issuance and revocation of licenses in accordance with " the Licensing Act. It may adopt all rules and regulations necessary to enforce the Act. Neb.Rev.Stat. Section 60-1403. Given the gravity of the criminal activity in this area, it would appear that if, indeed, the industry is to be self-regulating, the Board is in an excellent position to impose swift sanctions against those dealers who violate the law.

The revocation of a dealer's license is an economic penalty which cannot be taken lightly. However, in order to be effective, revocations and/or suspensions must be imposed if odometer fraud is to be halted in Nebraska

CONCLUSION

Odometer fraud is a crime of massive proportion. It has proceeded unchecked, and the criminals have operated with impunity. The Task Force believes that adoption of its recommendations would contribute strongly to a reduction in the volume of this criminal activity. Implementation of more stringent administrative controls for title documents will reduce the laxity in processing title applications and odometer statements. The recommended legislation is vital in order to provide administrative and law enforcement personnel with the requisite framework to effectively meet this problem.

The penalties for odometer fraud at the present time are meaningless. It is imperative that this crime be classified as a felony, and prosecutions actively pursued. The Attorney General's office now has initial funding to develop a fraud unit to deal exclusively with this criminal activity. It is urged that this unit cooperate with

other state and federal agencies to develop a standardized information exchange to more effectively deal with this major consumer problem.

APPENDIX A

RESOLUTION

Whereas, the Board of Directors of the National Independent Automobile Dealers Association recognizes that the buyers of used vehicles, both private individuals and dealers, rely heavily upon odometer readings in determining the value of said vehicle, and

Whereas. the Board of Directors realizes that there is a growing epidemic of odometer tampering throughout the nation in both the private and public markets, and

Whereas, the tampering or alteration of any odometer is a violation of both state and federal laws, and

Whereas, any tampering or alteration of an odometer by any NIADA member is a violation of the association's Code of Ethics, and

Whereas, It is the belief of the NIADA Board of Directors that the welfare of consumers and dealers alike would be better served if the practice of odometer tampering by both the business and private sectors was totally eliminated, be it therefore

Resolved, that the NIDA Board of Directors continues to show strong support for enforcement of the federal odometer law, and be it

Further resolved, that the Board of Directors calls upon all NIADA members to support the law and to work with both state and federal authorities in their enforcement, and be it

Further resolved, that the Board of Directors believes that the final solution to the odometer problem lies not in enforcement in only one aspect of the used vehicle industry, but in complete nationwide enforcement which does not put any one industy or segment of an industry at a competitve disadvantage, and be it

Further resolved, that the Board of Directors calls upon states throughout the nation to adopt the universal title concept, and to take immediate steps to implement such a program, and be it

Further resolved, that the Board of Directors urges the manufactures of automibiles and trucks to develop a tamper-proof odometer, and be it

Further resolved, that the NIADA Board of Directors calls upon the Congress of the United States to appropriate adequate funding so that enforcement of the federal odometer law can be carried out on a uniform and comprehensive basis throughout the nation.

APPENDIX B

SUMMARY OF H.R. 1320

Purpose: "To protect purchasers of used automobiles from fraudulent practices associated with automobile odometer modifications, and for other purposes."

Sponsor: Congressman John Dingell (D-Michigan), Chairman of the House Energy and Commerce Committee

Status: H.R. 1320 referred to Energy and Commerce Committee. Subsequently referred to subcommittee on Telecommunications, Consumer Protection and Finance, Chaired by Congressman Tim Wirth (D. Colorado)

Summary: 1. Following the sale of a motor vehicle from one person to another person, such vehicle may not be registered or licensed for use in any state unless:

(a) the seller discloses the true odometer reading as of the date of sale and,

(b) the application by the new owner of the vehicle for a certificate of title is accompanied by the prior owner's most recent vehicle registration card.

2. No registration card may be issued in any state unless the application for registration includes an odometer reading.

3. The state must take this odometer reading and include it as part of the new registration card.

4. The certificate of title issued by the State to the new owner must indicate the odometer reading as of the day of transfer (printed on the title) and be printed in bank note intaglio printing process.

The preceding provisions are designed to create a record from which odometer tampering can be traced and the violators prosecuted.

Senator EXON. One question I would like to ask here.

Mr. Sullivan, what percentage of these tampered with automobiles, according to your research, goes through automobile auctions? I mean I do not suppose all of them do, but I am assuming that a high percentage of them go through auto auctions?

Mr. SULLIVAN. A very high percentage. You know, it does not necessarily have to be. If they want to avoid the auction, that market system, they can easily do it with their transports coming out of these tampering industries, and there are always fleet vehicles—they can avoid the auction. But I would estimate that our auction and the Kansas City auction, for example, I will bet you that of the 3-year-old cars and less, 75 to 80 percent have all been spun.

Senator EXON. Mike, would you agree with that figure?

Mr. O'DANIEL. Yes, I would.

Senator EXON. But then you also agree that, even if we could some way seal that off there, there would be other ways to inject these into the marketplace. Is that correct? It is convenient to do it that way, but it could be done by other means.

Mr. SULLIVAN. Yes.

Senator EXON. Thank you.

Senator DANFORTH. Mr. Fagan?

Mr. FAGAN. Mr. Chairman and members of the committee, I am Pat Fagan, a franchised Chevrolet-Cadillac dealer from Janesville, Wis.

As a member of the legitimate dealer trade, I am deeply troubled that we continue to have problems with these spun odometers and incorrect title information on vehicles that come into our possession. These problems are most evident in wholesale transfers from out-of-State sources. Professional crooks continue to get rich at our expense.

Please understand that we need this wholesale transfer system badly. We need to buy cars and trucks our customers want, and to wholesale vehicles which we do not need so we can get working capital. Most dealers cannot rely on their own trade-ins to serve the used vehicle needs of their own communities. Please see how important it is to we dealers and our customers to have a clean wholesale trade.

Our State of Wisconsin has been conducting title searches on vehicles transferred into our State. They have found a 93-percent evidence of odometer fraud on vehicles which have been titled by out-of-State dealers from these States we speak of. We have no way of knowing there is a fraud from the title papers, because the State of titling issues a clean title, some even having the wrong mileage printed on them, saying that it is the actual mileage.

The administration of odometer information is quite lax, as you see, we believe, in far too many State jurisdictions. The current information system is antiquated. Each State does its own thing. It can take months for a dealer to check a title history to verify the odometer reading. It has to be done in writing, step by step, with fees paid to each State of title transfer to track down the original owner and verify the mileage.

With further examination in Wisconsin, the cost of odometer fraud on those registrations that came from out of State to the legitimate dealer and his customer may be as high now as $12 mil-

lion. We need a new tracking system, such as provided by your bill, S. 1407.

We support that claim, but that in itself is not enough. We urge that the bill be amended by this committee in the following ways: First, increase the current civil penalty for rolling an odometer from $1,500 to $3,000. Inflation alone suggests this. Fifteen hundred dollars is no deterrent to the big-time spinners. It is just not enough to justify the dealer or his customer chasing out of State to bring an action.

Second, require consignees to provide odometer statements. Now, the Federal law states that only the person who actually owns the vehicle must sign the document, creating a link in the chain of the odometer history. For example, in Wisconsin, we dealers take vehicles in from customers on a consignment basis, those who wish us to sell their cars for them. We have to provide them with an odometer statement as a chain in that transaction as well.

All auto auctions consider themselves as consignees, and therefore they are not part of the disclosure system. It would help us if wholesale and retail auctions would take on this added chain responsibility. They would be more careful who they accepted cars from, I am sure.

Third, require lessees to provide a Federal odometer statement. Again, the lessees are not the owners. Yet, they are putting on the miles. There is a great incentive for a lessee to roll back an odometer when he or she gets into a penalty situation for excess miles.

The lessor now issues the first odometer disclosure statement, and must put down the actual miles, unless he knows different. I ask: How do you know?

Fourth, increase the criminal penalty to a felony. And I do understand that an amendment creating a felony might cause this bill to go to the Judiciary Committee. If you were to consider that, perhaps you might be willing to add that on a floor amendment.

This is very urgent to us, we feel. The U.S. attorneys have had to use the mail fraud laws to gain the few convictions we have had against the professional spinner. One U.S. attorney told us it is too expensive, too difficult to go that route. And they do not have much time to work on crimes that are not of a felony nature.

All of the other civil penalties are marketplace self-enforcement penalties. They are also not sufficient. They do not get at the pros, the big operators, the organized criminal. Their profits can be so large on so many vehicles, that a few civil damage cases are simply a minor cost of doing business. Civil remedies are not getting the job done.

We need the State and Federal cooperation across borders with criminal penalties that really mean something. There is no sense in being soft on these so-called white-collar crooks who engage in a pattern of odometer rollback fraud.

In summary, gentlemen, the State of Wisconsin and its dealers strongly support S. 1407. We appreciate your committee to consider any of the amendments I have offered, and I would be happy to answer any questions.

[The statement follows:]

STATEMENT OF PAT FAGAN, PRESIDENT, WISCONSIN AUTOMOBILE AND TRUCK DEALERS ASSOCIATION

Mr. Chairman and Committee Members, I am Pat Fagan, Fagan Chevrolet, Cadillac, Inc., Janesville, Wisconsin. I am in business with my father and brother, and my wife works with me as well.

As a member of the legitimate dealer trade, I am deeply troubled that we continue to have problems with spun odometers and incorrect title information on vehicles which come into our possession. These problems are most evident in wholesale transfers from out-of-state sources. Professional crooks are getting rich at our expense.

Please understand that we need this wholesale transfer system. We need to buy cars and trucks our customers want, and to wholesale vehicles which we do not need so we can get working cash. Most dealers cannot rely only on their own trade-ins to serve the used vehicle needs of their communities. Please see how important it is to we dealers and to our customers to have a "clean" wholesale trade.

Our state of Wisconsin has been conducting title searches on vehicles transferred into Wisconsin. They have found a 93% evidence of odometer fraud on vehicles which have been titled by out-of-state dealers from certain states. We have no way of knowing there is a fraud from the title papers because the state of titling issues a clean title. Some even having the wrong mileage printed on it saying that it is actual mileage. They can and should know differently.

The administration of odometer information is quite lax, we believe, in far too many state jurisdictions. The current info system is antiquated. Each state does it's own thing. It can take months for a dealer to check a title history to verify odometer readings. It has to be done in writing, step-by-step, with fees paid to each state of title transfer, to track down the original owner and verify the mileage.

We believe that in Wisconsin the cost of odometer fraud to legitimate dealers and customers may be as high as $5 million per year. We need a new tracking system, such as provided by S. 1407. We support the plan. But that is not enough.

We urge that the bill be amended by this committee in the following ways:

1. Increase the current civil penalty for rolling an odometer from $1,500 to $3,000.—Inflation alone suggests this. $1,500 is no deterrent to the big time spinners. It is not enough to justify dealers or customers chasing out of state to bring an action.

2. Require consignees to provide odometer statements. Now the federal law states that only the person who actually owns the vehicle must sign a document creating the link in the chain of odometer history. (In Wisconsin, dealers which take cars in on consignment from customers must provide an odometer statement). All auto auctions consider themselves as consignees, and therefore not part of the disclosure chain. It would help us if wholesale and retail auctions would take on this added "chain" responsibility. They would be more careful who they accepted cars from, I'm sure.

3. Require lessees to provide a federal odometer statement. Again, the lessees are not the owners. Yet they are putting on the miles. There is a great incentive for a lessee to roll back an odometer when he or she gets into * * * The penalty for excess miles. The lessor now issues the first odometer disclosure statement, and must put down "actual" miles unless he knows different. How do you know?

4. Increase the criminal penalty to a felony.[1] This is urgent. U.S. Attorney's have had to use mail fraud laws to gain the few convictions we've had against the professional spinner. One U.S. attorney told us it is too expensive, too difficult to go that route. And they do not have much time to work on crimes that are not a felony.

All the other civil penalties are "market place self-enforcement" penalties. They are not sufficient. They do not get at the pros, the big operators, the organized criminals. Their profits can be so large on so many vehicles that a few civil damages cases are simply a minor cost of doing business. Civil remedies are not getting the job done.

We need state and federal cooperation, across borders, with criminal penalties that really mean something. There is no sense in being soft on these so-called "white collar" crooks who engage in a pattern of odometer rollback fraud.

I have amendments addressing these issues. They are offered as a result of a resolution unanimously adopted by our Wisconsin Automobile and Truck Dealers Association Board of Directors, with about 40 dealers present and voting.

---

[1] I understand that an amendment creating a felony penalty may cause the bill to go to the Judiciary Committee. Perhaps consideration could be given to adding the felony penalty on the floor.

Thank you for this opportunity to speak. Do you have any questions?

Senator DANFORTH. Thank you very much. I want to say that when I was attorney general of Missouri, when we were plagued by this problem, the Missouri Automobile Dealers Association was very helpful to our office. I am glad to see that there is a continuing interest on the part of automobile dealer associations throughout the country.

If we were to enact S. 1407, would it be foolproof?

Mr. GUNN. I do not know whether we could answer that in the affirmative. But I will say that in Texas we do have this law and it became effective in January. And in discussing this with our director of licensing for the highway department in Texas, so far this year the fast title activity which we have, where you can get a title overnight, has dropped from 81,000 last year, and now is progressing at a rate of not more than 60,000. So we know that it is having some effect.

And this last week, the attorney general made cases in San Antonio on five dealers, one of whom was a rental car agency, in which they filed for 49 counts of adjustments of odometers, which will entail roughly $80,000 in fines.

Senator DANFORTH. You think that this would lead to a significant reduction, but that it is not foolproof? It would still go on.

Mr. GUNN. Well, it is going on because of the States that do not require it on the title. We require it on the title.

Senator DANFORTH. Right. But if we were to pass this bill, would that solve that problem, or would it just make it a little better?

Mr. GUNN. It would make it easier for us to nail the people that are passporting these titles out of the State and paying for——

Senator DANFORTH. If somebody were corrupt, would there be other ways open to that person? Could they traffic in counterfeit registration cards? In other words, would this just alter the practice a little bit, so that with another little extra step, people could continue rolling back odometers?

Mr. GUNN. Well, have the mileage on the title and have it on bank note paper so it cannot be altered, you would have taken a great step to stop it. And we have that in Texas.

Senator DANFORTH. Thank you.

Senator Exon?

Senator EXON. Thank you, Mr. Chairman.

Mr. Chairman, I just want to say for the record here, to develop a record on this that we can refer to afterward, but I am convinced after studying this problem, even in more detail after I introduced the bill than I had before, that this is a crime in America that is far, far, far worse than dollars and cents, than bank robbers or, even horse thieves that used to be a pretty serious crime in Nebraska—not so big anymore.

But the consumer loss in this particular way of fleecing them has become so large, and it has become so devastating, we just must move in certain areas. I just want to point out that this is not just a few hundred dollars. The average probably on these late model cars, by tampering with the odometer, would more likely be in the range of $1,200 to $1,800, in that general area someplace.

There has been an awful lot of heartache and headache and loss financially by someone who has bought this misrepresented automobile. At the end of 30 days when the usual warranty runs out, the transmission falls out of the car, the engine quits running, and they are at a terrible, terrible loss.

This is a kind of a faceless crime, as Mr. Sullivan has said. But, nevertheless, it is a very, very serious crime. I suppose not a great deal of attention has been paid to it over the years, because it is not a violent crime, no gun is used, no life is directly in jeopardy. And the misdemeanor concept of this crime in the past has just kind of opened the door and almost invited people to come in and make a major racket out of it that it is in the United States today.

I appreciate very much the suggestions that have been made by Mr. Gunn and Mr Fagan as to amendments. And we will take a look at those. The chairman asked if this was—did you say a perfect bill, a foolproof bill, is that right? I suspect not. I suspect that there are very few foolproof bills passed by this Congress that somebody is not going to try and figure out some way around.

But there has been a lot of thought that has gone into this process, and we have basically relied on the people who are out there where the rubber meets the road, that know this matter firsthand.

I have a few questions that I would like to get on the record on this subject, so that those of our colleagues who are not here might have a chance to read the record. And I think probably Mr. O'Daniel could answer these questions, or Mr. Sullivan, if you care to.

Mr. O'Daniel, just tell me for the record, as briefly as you can, how does someone go about getting a new, lower odometer reading on his title?

Mr. O'DANIEL. Well, in Nebraska, we have a provision on the title to put the mileage on, as many States do. However, it is not done, because we have an odometer certificate that has to accompany that title. So the company is to record the mileage on the odometer certificate and sign it.

What happens is, you sell this vehicle wholesale and you put the mileage on it, you sign it, and whomever bought that vehicle just detaches that odometer certificate, makes out a new one, puts a lower mileage on it, and signs it with an almost illegible signature, and he turns it over to another party; they make a title application, for instance, in Ohio or Tennessee. They send it there; it comes back, and then he makes another application in another State.

And what they are doing is destroying the paper trail, so you cannot track that title. It is easily done.

Senator EXON. I assume—and tell me if I assume correctly—that this matter has become more involved and more lucrative in recent years, with the proliferation of the leased cars and the rental cars. You know, you can take a 1983 automobile, and you can put 80,000 miles on it in a hurry if you are driving all over the country with it. And yet, the automobile physically looks like a car with only 25,000 or 30,000 on it.

Do I assume that that is—this particular crime is concentrated, I suspect, in high-value, late-model cars, no more than 2 or 3 years old. Is that about right?

Mr. O'DANIEL. That is where the majority of it is. We have had a lot of inflation in the last 5 or 6 years, and our used cars now, instead of being worth $2,500, they are worth $5,000, $8,000. And a leased car is very easy to disguise, as you say, because they do not show the wear and tear on the outside, because the mileage was put on in a hurry.

So that is a prime candidate for odometer spinning in a fleet car or leased car, or late-model expensive car, because the higher the value of the car, the more chance of a profit. I look upon it, something as a percentage. There is no percentage in setting back the odometer on a $1,000 car, but if you can clock a $6,000 car and make it an $8,000 car, that makes it worthwhile. As somebody said, you can do 40 or 50 of these a day, it becomes a great business.

Mr. FAGAN. Senator, may I comment?

Senator EXON. Yes.

Mr. FAGAN. I might also add that as a result of our last recession, the average ownership age of the automobile that has been held by the consumer has grown from roughly 4.8 years to between 6 and 7 years old. So it is far more rampant now, because there is that many more higher mileage cars in the marketplace being traded at the present time.

Senator EXON. And is the story still used in the trade about this being one of those cars that was always in the old lady's garage for 2 years, and only driven to church on Sunday? I suppose that fits this late-model situation pretty well, doesn't it?

Mr. GUNN. An old school teacher drove this car.

Mr. O'DANIEL. Yes; I think that is a good description of those cars; that is being used.

Senator EXON. Let me get into the matter of—I think you heard me a few moments ago say that I have suspected with this tampering that, on average, the additional cost or profit in an automobile that is tampered with runs in the range of $1,200 to $1,600, $1,700. Would you say that is the range, on average?

Mr. O'DANIEL. Well, it depends on what you include in that cost. I mean the consumer is harmed initially in the purchase, because he pays perhaps $2,000 too much for the car. And what happens is, he drives the car, and a month or 3 or 4 months later, he begins to develop mechanical problems. So he goes to a mechanic to see what his problem is, and the mechanic looks over the car and says, sir, I think this car has a lot more mileage on it. This car needs extensive repairs; it needs this and that.

So then the owner goes back to whomever he bought it from and he says, say, my mechanic told me that this speedometer has been set back on the car, and the person who sold it to him says, well, that cannot be. I have a copy of the odometer certificate, given to me by the person that I purchased the vehicle from. So the person contacts an attorney and finds out he has no recourse.

So then he tries to sell his car because of the burden. Then, by this time, the car is deteriorating physically on the outside, and it does not drive the same, and it is very obvious to whomever he is trying to sell the car to what the car is. And he finds out the car is worth way less than what he paid for it, indeed, even way less than how much he owes on the car. So he is financially stuck. He has got 36 months to pay for it, and he has to pay for these repairs.

If you add all these things together, with the cost of the repairs, it could easily exceed $2,000.

Senator EXON. Gentlemen, I just have one last question. I thank you very much for your excellent testimony.

Is there anything that any of you would like to add as to what can be done to cure this critical problem? I guess you assume that the bill that has been offered, some amendments have been suggested—is that, in your opinion, going to be a significant step to address what we all know is causing great difficulties for an awful lot of consumers today?

Anything you want to add in your closing statement, Mike?

Mr. O'DANIEL. I will not repeat the suggestions that the others have made, because I agree with all of those suggestions. I would also like to add that if we have a uniform title document in this country, and do those things we are talking about, it would be very easy for us to, at the time that title is reassigned to a new purchaser, that we could record that mileage at that time in a computer, through a centralized organization to record that mileage in that computer, that date, that serial number, and that previous owner.

I do not think we are talking about much cost, and we already have the vehicle to do that with the present title fees. And perhaps we add so many cents to that title fee to cover that cost, and then we can offer to the potential buyer of this vehicle later on, the chance, for a fee, to go back and retrieve this information out of the computer. I cannot imagine, once you have this in place, how this fraud can continue. You have got a locked-in trail on that vehicle and that title, putting them together.

Mr. GUNN. I would just like to make one point. The consumer that is trading in an 80,000-mile car has found out that he can turn it back and get a better price for it when he trades it in on a new car. And I just had this happen. We discovered it, and, of course, we made the customer buy it back because in our State, we would be subject to triple damages if we sold a car and we were able to prove that we had sold a car with an altered odometer.

Senator EXON. Thank you very much, Mr. Chairman. I just want to thank the two witnesses from Nebraska for not getting in a plug for Nebraska football. It is very unusual. And thank you for you patience in that area.

Senator DANFORTH. After the Orange Bowl, I can understand it.

Mr. O'DANIEL. We are pretty quiet about football.

Senator DANFORTH. That is all right; you beat Mazoo.

Mr. SULLIVAN. We would have won with a lot more dignity than Miami did.

Senator EXON. I should not have brought that up. I withdraw the question.

Senator DANFORTH. Thank you all very much.

Next, we have Joan Claybrook, the president of Public Citizen.

STATEMENT OF JOAN CLAYBROOK, PRESIDENT, PUBLIC CITIZEN, ACCOMPANIED BY WILLIAM SCHULTZ, SENIOR ATTORNEY, PUBLIC CITIZEN LITIGATION GROUP

Ms. CLAYBROOK. Good morning, Mr. Chairman, Mr. Exon. My name is Joan Claybrook. I am president of Public Citizen, and with

me today is William Schultz, who is an attorney in Public Citizen, who has worked with us for many years, and is representing a used-car dealer in Baltimore who has been defrauded by odometer fraud at an auction on the east coast.

I would like to summarize my statement and place the whole statement in the record.

As we have already heard this morning, odometer fraud is a major problem for consumers. The Department of Transportation has estimated it costs us $2 billion. And there is a real problem, because consumers are rarely able to detect this problem of when it occurs, and do not find out about it until their car has problems, in most cases. It is a very widespread problem, and one which we believe can be remedied readily by your legislation.

There are many people in the automotive industry, as you have heard this morning, who do not like the practice of odometer fraud, but I think that no one is going to be able to stop it within the industry, absent Federal legislation. And I think that that has been made clear by some of the testimony this morning.

Obviously, the honest businesses are the ones that are hurt by this practice, and it is because of that that an industry working group was formed last fall to try and address and resolve some of the problems in this area. But there is also a problem with industry working groups, and that is that they usually come up with the lowest common denominator that satisfies all of the different participants, and it usually takes a great deal of time for anything to result.

The existing statute is really one of the best consumer statutes on the books, because it authorizes a multiplicity of enforcers to enforce the law, and it gives them great incentives to do so. However, there are some deficienicies in the present statute, and it is for that reason that we favor enactment of this legislation.

The additional steps that we would recommend are as follows: First of all, we think that to require the odometer readings on car titles is very important, as your legislation would require, and we will submit to the committee staff some technical suggestions on the drafting of the language, particularly with regard to the definition of interstate commerce and also the relationship between titles and registration. We think there may be a problem with including the registration as it is drafted.

I think that the suggestion of having a uniform title document, as was recently suggested by the last witnesses, is a very good idea because I think there would be an incentive with the uniform document, which now does not exist among the States, for a company such as R. L. Polk—a company in Detroit, which now keeps track of all new-car and used-car transactions—to computerize this information. And I would urge you to ask the committee staff to talk with R. L. Polk as you consider the language for your bill.

R. L. Polk has been servicing the automotive industry for years, and in fact is the company that is used by the Department of Transportation and the new-car manufacturers to get information on who owns cars, for recall purposes. So they get data from every single State motor vehicle department as to who is the owner, the current owner of cars, and they do it on a monthly basis. If there was a uniform title document that had the odometer reading on it,

there is absolutely no reason why they could not add one character to the computer records they now have, which is the odometer reading, so that a motor vehicle dealer could very quickly request the odometer reading for a car that he is about to buy from an auction, and it would be a very quick way of enforcing your law.

Additionally, I completely disagree with the Department of Transportation in the revocation of standard 127. In 1976, the Department of Transportation recommended that odometers be designed in such a way that the consumer can tell if the odometer has been tampered with. The Department did not presume to say that odometers could be made totally tamper-resistant. But they said that they could be made more difficult to tamper with, and the regulation that was proposed, some of the industry objected to, and when I was in office, we went and spent many hours with the manufacturers in Detroit. We gave them a number of different options of ways to comply with the standard, so it is a performance standard allowing them a number of different ways they could make the odometer tamper-resistant.

The major issue was to have the odometer reveal if it had been tampered with, so that the numerals would be marked when they pass, and so if it were rolled back, you would see that they are marked; or, alternatively, it would break in some way, so the odometer would be inoperable.

The second part of the standard required that replacement odometers be a different color, so that you could not just go buy a replacement odometer and stick it in the car and get away with it. It would be revealing. So the whole concept of that standard was to reveal to the dealer or to the consumer that there had been fraud. So it would make it much more difficult for fraud to be committed.

We believe that this is an important adjunct to your provisions in your bill, and we would urge that you put them in your legislation. And we would be delighted to try and help you with the drafting of it in such a way that it would not freeze technology. That is very important. You want to have it flexible enough so that it would not freeze technology, but at the same time so that the consumer would be alerted.

Another alternative which you might want to consider is to require, now that cars have electronics in the engine, electronic capability in the engine, is to require a recording in the engine itself of the mileage, with just a computer chip. And that is another alternative. The Department of Transportation engineers are quite aware of it, and even if the Department does not personally want to take a position favoring it, I think that they ought to be able to give you technical assistance in a discussion of this subject, and I would urge the committee to ask for that, because I think they could help you a great deal with the technology.

In addition, it seems to us that the recommendation of the Department of Transportation to make this a felony is a very good one. It is not enough, but we would also indeed support that.

Finally, it seems to me that there are some immediate things the Department of Transportation could be asked to do, pending the enactment of your legislation, and that is to ask the States that have not been putting the odometer reading on to do that. I mean I think a letter ought to be sent to them immediately, to ask them to

do that. I think that all leasing and rental companies—and there are some very large ones that supply the majority of the cars in the market—should be sent a letter by the Department of Transportation and asked if they would put the odometer readings on the titles before they transfer them. I think that there should be a certain amount of business responsibility here that could attempt to at least reduce the problem, pending enactment of your legislation.

I would like to ask Mr. Schultz, who has been working with a used-car dealer on this problem, to give you a brief assessment of a few of the things that he has discovered.

Mr. SCHULTZ. I just want to spend a few minutes, and to some extent I think this is a summary of what other witnesses have said, talking about what the reasons are that this is a problem, and that it has been so pervasive.

The first one, which you have heard about, is that rolling back an odometer is easy to do, and it is very profitable. "60 Minutes" showed the Nation how you can do it with a coat hanger.

The second one is that there are still States that do not require the odometer to be on the title, and this is a problem that this bill would address. In our investigation, we ran across an example of this that really highlights the problem. Tennessee, for a long time, was one of those States, and in Tennessee, there is a town called Cleveland, Tenn., where the biggest business is the shops which reprocess leased and rental cars, and roll back odometers. So, if you look at the phone book in Cleveland, Tenn., even though there are only a few thousand people, there are literally hundreds of car dealers.

And what happens is, these cars are processed through Tennessee, and then they are typically taken to an auction in Pennsylvania or New Jersey, and sold there in the wholesale market to dealers, who then sell them to consumers.

Pennsylvania did a study of the problem, and in their study they found that 99 percent of the cars from Cleveland, Tenn., sold at their auction had rolled-back odometers. You almost have to think that the 1 percent was an error in the study.

The third reason is that the auctions refuse to do anything about the problem. I think one of the witnesses from Nebraska testified that his estimate was that 80 percent of the cars sold in auctions, 3 years old or less, have rolled-back odometers. The study in Pennsylvania made similar findings. It was not quite as high, but the point is, people involved in auctions are well aware that a high percentage of the relatively new cars sold at their auctions have rolled-back odometers.

Senator EXON. Let me correct what I think the witness said. I asked a question, and it was with regard to what percentage of automobiles with tampered odometers are sold through auctions. I do not believe that he meant to say that 80 percent of 1, 2, and 3-year-old automobiles have their odometers tampered with. The point he was making was—what I was trying to get at, what percentage of these tampered odometers go through auctions, and he said 80 percent.

Would you agree with that?

Mr. SCHULTZ. I do not know. I may have misunderstood, and if so, I apologize.

Senator EXON. You did, I think.

Mr. SCHULTZ. Pennsylvania did a study a few years ago in which they looked at this problem, and they found that 20 percent of the cars sold in Pennsylvania auctions of all cars that were included in the study had rolled-back odometers. Presumably, the figure would be higher if you just looked at the relatively new cars.

And to make my point, it does not really matter what the percentage is. The only point I was making is that it is well known that a substantial number of cars sold in auctions have rolled-back odometers, but because of the way the cars are sold, the auctions are able to just disavow any responsibility for this, and that would be one way to police it, and it is one reason that this is such a problem, in my opinion.

Fourth, consumers, I think, are generally not aware of this problem. Consumers are not aware of the great chance, when they buy a used car from a dealer, that there is going to be a rolled-back odometer.

And then, finally, the Government is just not enforcing the law. These cases, we are told, are very unpopular in the civil division and the criminal division. It would be so easy, for example, simply to go to the Pennsylvania auctions, get the names of the Cleveland, Tenn., car dealers, and start tracing the titles. And yet, this is not done.

Finally, I would like to make one additional suggestion concerning drafting the bill, and I think this ties in with what some of the other witnesses have said.

The current Federal Government regulations require this odometer disclosure to take place on a piece of paper that is given from the seller to the buyer of the car. And the bill that is being considered would essentially put this disclosure on the title, which would make it harder to falsify. But we would ask you to include a provision that would go a little bit further, and also require that the title include basically a record of the names of the previous owners of the car and the odometer reading at the time they sold the car.

This could be done in one of two ways. First of all, it could be done on a single title, so that each time the car was sold within a single State—or if there were a uniform title—each time the car was sold, there would be a place on that title for the odometer reading and the name of the seller. If, for some reason, an additional title had to be purchased, either because the car was sold in a different State or because there was no more room on the title, we would suggest that the old title be stapled to the new title, so that every time a consumer bought a car, he would have a record of every owner and every odometer reading.

This would create the paper trail that the dealer from Nebraska was testifying is so hard to re-create, and so that every buyer would have this, and then if you wanted to determine—if either a dealer or a consumer wanted to determine whether the odometer had been rolled back, he could simply call the previous owners.

Thank you very much. That concludes my testimony.

Senator DANFORTH. Senator Exon?

Senator EXON. Thank you for your testimony and information.

Let me ask three questions. Ms. Claybrook, you suggested about uniform titles. Briefly, can you tell me how many substantially different title forms are there? Are there 50 different title forms because we have 50 States? Is there a near-uniform situation? If we went to that kind of a system, what I am getting at, would there be a significant cost in some States to change to a uniform title, or would all of them have to change in some way?

Ms. CLAYBROOK. I think that most would have to change, but there is a lot of similarity among them. Perhaps what you could do is ask Richard Morris of the Department of Transportation, who was a witness today, is the Chief of the Odometer Section at the NHTSA, to provide you with a recommendation and more factual information on that.

I believe it would require most States to change, but you could change it prospectively. And, while it is a little bit confusing in the beginning, it should not be in the long run.

One of the things that I did at NHTSA, which was very painful, was to require a uniform vehicle identification number, a VIN. And we had all sorts of fights about it, because every State had a slightly different system.

Senator EXON. And everyone has the best one, of course.

Ms. CLAYBROOK. And everyone had the best one. And they adjusted. I mean it took a little bit of effort, but everyone adjusted. And in the end, it is much cheaper.

Senator EXON. What about equipment costs? If you made a major adjustment, would that be an expensive proposition for the individual States and the counties and the authorizing——

Ms. CLAYBROOK. I do not think so. I do not think so. Most titles are about the same size and there are small differences between them, but they are basically similar documents, and you would have to just choose a design. It may be that you would like to, in your legislation, require the Department of Transportation to issue a regulation designating exactly what the uniformity would be, in consultation with the motor vehicle administrators and others who are extremely knowledgeable in this.

Senator EXON. Ms. Claybrook, just one other question, then a closing statement.

You suggested the possibility of different color replacement if you have to replace the odometer.

Ms. CLAYBROOK. For the odometer. Right.

Senator EXON. My thought to that would be that this business is so big today, couldn't that be rather easily overcome with counterfeit odometers that could be made to look just exactly like the original piece of equipment? That would be one way to defeat the effect of that, would it not?

Ms. CLAYBROOK. Well, we did not think so. When we issued that standard in 1978, we took a look at the number of manufacturers. Now you are talking about manufacturers, so it is a much smaller category or market that you are looking at. Odometers are complicated instruments to manufacture, and so there are not that many odometer manufacturers. And so you have a discrete group of people against whom you would enforce the law.

And most of them would not like to be caught violating Federal law, and I believe particularly if it was a felony, they would not do

it. I just do not believe that would happen. It is not the same as rolling an odometer.

Senator EXON. You do not think the Japanese could copy it cheaply?

Ms. CLAYBROOK. Oh, I am sure they could. But the Japanese actually obey Federal law rather heavily in the United States, so I think that it is a very feasible proposition and one that is relatively easy to enforce, in fact much easier to enforce than spinning of odometers.

I would like to add one small thing, and that is to say that I think it would be also helpful on a uniform title or any title, that there be a small section at the bottom that indicates that it is a violation, and exactly what the violation of law is for rolling the odometer or spinning the odometer, so that the individual consumer knows that. I think that that is one of the missing links here in this problem.

Senator EXON. What about the cost of the suggestion that you made with regard to having some kind of an odometer or mileage counter in the block of the engine itself? Is there a cost figure on that?

Ms. CLAYBROOK. I do not have a cost figure. For the standard 127, as it applied only to odometers—it covered speedometers as well—but just the odometer part of that cost consumers about $1. And I think most consumers, for the peace of mind, would be willing to pay $1, and if it cost $2 in the engine block, I am sure they would be willing to pay that. Most people simply do not want to have rolled odometers, and it is so cheap to do it on a mass production basis. That is what was so outrageous to me about the revocation of the standard. It is a very, very inexpensive remedy.

Senator EXON. One last question, Mr. Chairman.

If this bill should be enacted into law, with all of the amendments that you would like to see in it—one of the problems we have here is that there has never been a law come up that there are not 20 people come up here and say we would be a whole lot better off if we would write it this way. But we like that. That is what these hearings are for.

What I am saying is, if we could write this bill and pass it the way you think it should be, would we then need to worry about the different colors on replacement odometers or counters in the engine, or do you think this bill, if properly written, would make such other possible remedies not necessary?

Ms. CLAYBROOK. Well, I think that even if we took all the steps that we have discussed on the paper trail, which is essentially what your bill addresses, it is still possible to commit fraud. It is harder, but it is still possible to do it. And so our belief is that the best way to solve this problem, since you are addressing it, and since it is so cheap to do it with a design of the odometer and the different color replacement odometer—so inexpensive to do it—we think that it ought to be a part of that package and I think that it would virtually elminate odometer fraud in this country. And what a major contribution to consumers, if you could do that.

Senator EXON. Good point. The problem that we have, of course, with all these things, as the chairman knows, the more we add to

these things, the more opposition we get, to the place where maybe we do not get anything passed.

Thank you very much for your testimony.

Senator DANFORTH. Joan, let me just follow up on Senator Exon's final question.

You do not view these as two alternative approaches to solving the same problem? That is to say, you said that if we did the numbering on the title, that would not obviate the need for the change in the odometer itself and making it tamper-proof.

Is the reverse also true? That is, if we change the design of the odometer, would that render the title change unnecessary?

Ms. CLAYBROOK. No, I do not think so. I really think that you need both, because the odometer change makes it more expensive and more difficult, much more expensive and more difficult to roll odometers, but it does not make it impossible. And improving the paper trail makes it more difficult. It makes the spinner more likely to have to commit a larger fraud, if you would, in his activities.

I think the two combined are far superior. I would also like to say that it has been the manufacturers, Ford and General Motors primarily, that have resisted the change in the odometer. However, after NHTSA finally eliminated this provision in the standard, it turned out that General Motors had already made its capital investment, and I think that it did most of what the standard required anyway.

Senator DANFORTH. Oh, so it is already doing it?

Ms. CLAYBROOK. In part, or large measure. So I think that it would be very worthwhile for the committee to ask the manufacturers their position on this and see if we could not have a little negotiation with them.

I would also like to say that I have talked to the House side, and they are very interested in this legislation, and would like to pass it.

Senator DANFORTH. But my experience with car manufacturers is that when you ask them a question, you get a very short answer.

Senator EXON. Can't do it.

Senator DANFORTH. Even shorter. No.

Now, Senator Exon raised the question earlier in the hearing as to whether or not it would be possible to fix a broken odometer if we had this antitampering rule. What would your answer be to that question?

Ms. CLAYBROOK. Under standard 127, as it had been issued? No, you would not be able to fix it; you would have to replace it. And that was the reason for the companion provision of having a different-looking replacement odometer, so that you could not just replace it with something that looked alike.

You would have a period of time for that to take effect, because there is already stock available.

Senator DANFORTH. Exactly the same type of odometer, except the color might be orange or something.

Ms. CLAYBROOK. That is right.

Senator DANFORTH. And finally, your successor, Diane Steed, said that in her view it was not feasible to promulgate an antitampering rule. I take it you simply do not agree with that.

Ms. CLAYBROOK. Well, I think the point that she was making was that you could not issue a regulation that would prohibit tampering. You can make it much more expensive, much more difficult, and you can make it revealing. That is what standard 127 did. And I know the technical staff at the NHTSA believes that that was a very effective regulation. They worked enormously hard on it, and we had very long negotiations with the industry on it.

So I do not think there is any question that that is technically feasible. The rationale that NHTSA used for revocation of 127 was that it did not contribute to safety, and that this authority was being issued under the safety standard authority of the statute. And my answer to that is that they simply did not take into account the fact that when a consumer spends $2,000 more for a vehicle because it is more expensive because the odometer has been rolled, they expect not to have to do repairs on the car. That is the reason they spend more money for it. And a lot of people just will not do the repairs that they should do, including brakes and lights and other things that are expensive, if they have spent the money on the initial purchase.

Senator DANFORTH. Clearly, it is related to safety.

Ms. CLAYBROOK. Well, I think it is clearly related to safety. I think that the agency's justification in 1978 spelled that out, and my written statement goes into this in a little bit more detail. But I think it is a ridiculous argument; the reason that the agency was not sued for that standard was because we were suing them on tire quality grading and another sued on standard 208 for air bags, and there were just too many lawsuits and we could not handle any more.

Senator DANFORTH. The reason that they withdrew the standard was that the auto companies were given veto power over what NHTSA did.

Ms. CLAYBROOK. Yes, it was part of the "Help Detroit" package that came out in 1981.

[The statement follows:]

STATEMENT OF JOAN CLAYBROOK, PRESIDENT, PUBLIC CITIZEN

Mr. Chairman and members of the subcommittee: I am pleased to appear before your subcommittee today to discuss S. 1407, a bill to protect purchasers of used automobiles from fraudulent practices associated with automobile odometer rollback. My name is Joan Claybrook, and I am President of Public Citizen, a national public interest group. With me today is Mr. William Schultz, a senior attorney in the Public Citizen Litigation Group, who is presently involved in odometer fraud litigation against one of the major used car auctions.

For a number of years, odometer fraud in the United States has amounted to a billion dollar ripoff of the consumer. Annual sales of used cars in America exceed the 20 million car mark. Despite the enactment of the federal statute in 1972 prohibiting odometer fraud, consumer complaints to state, local, and federal agencies, and fraud investigations by all levels of government indicate that a significant number of used car transactions still involve the buyer being unfairly overcharged because the vehicle mileage is exaggerated. Without accurate mileage information, a purchaser is often unable to determine whether the vehicle is in a totally safe operating condition or when preventive maintenance will be necessary to keep it in a safe operating condition.

Odometer fraud is difficult to deter in the absence of effective laws and regulations, because the market in which these vehicles are bought and sold is far more complicated than the new car market and has a larger and more varied group of participants. Unlike the new car market, it does not involve a straightforward manufacturer-dealer-consumer chain of sales. Rather, a used car transaction can involve

only two parties if it is a private sale or as many as eight or ten if it involves cars that enter the large wholesale market for subsequent distribution to wholesalers, auctions, and dealers before reaching the consumer. There is ample evidence of the fact that for each used car transaction, there are individuals who make an unlawful profit through odometer fraud.

Private sales, which account for approximately 20% of used car sales, are not the major source of the problem. They do, of course, sometimes involve do-it-yourself odometer fraud. Broken odometers go unrepaired, speedometer cables are disconnected and in some cases the odometer wheels are manipulated. While there are no statistics which estimate the frequency of this type of fraud in private sales, there are private civil actions that document its occurance.

But most odometer fraud occurs in the commercial market. Used car auctions, distributors, wholesalers and dealers and the used car lots of new car dealers are in too many instances directly involved in fraud. In some instances, the employees spin the odometers; in others itinerant odometer spinners are hired to do the job. In many areas small wholesalers without any retail business, who are often labeled "curbstoners," commit the initial fraud. Some are strictly local, picking up a car from one lot, modestly reconditioning it with a few new tires and a paint job, and spinning the odometer before selling it to a dealer on the other side of town. Other wholesalers operate in several states, buying cars directly from dealers or through auctions in one state and then reselling them in another. Another source of rolled odometer vehicles are reconditioners, or "detailed men" who have a retail sales lot as well as a wholesale operation. These sellers are able to commit this fraud by washing titles through states such as Oklahoma, Nevada, or D.C. which do not require odometer readings on the car titles. The cars themselves are not taken to these states for title washing. The wholesaler merely sends the paper title for recording purposes to the state motor vehicle department.

A significant branch of the wholesale used car trade involves the disposition of cars from fleets, principally those used by lease and rental companies. These vehicles are tempting targets for odometer fraud because they are recent models but have higher than average mileage. Based on observations by federal investigators, it is believed that many of the odometers in these cars are spun at some point before they are sold to retail customers.

The Department of Transportation has estimated the annual cost to consumers of odometer fraud is approximately $2 billion, although a precise number is hard to quantify. Unearned profits from odometer rollback amount to at least $200 for every 10,000 miles the odometer is spun. Thus, odometer spinning is one of the fastest ways to make money other than counterfeiting. But based on the present state of odometer law enforcement in this country, the odometer fraud perpetrator is less likely to get caught and punished.

In 1972, the Congress recognized the significance of the losses caused by odometer fraud and deceit and enacted Title IV of the Motor Vehicle Information and Cost Savings Act making it illegal for any person to disconnect or reset the odometer of any motor vehicle. In 1976 the Congress amended the law, forging it into one of the best and toughest federal consumer laws ever enacted. Title IV prohibits the advertisement, sale or use of odometer altering devices and requires disclosure of accurate mileage information to vehicle purchasers. It is also unlawful for any person with the intent to defraud to operate a vehicle knowing that the odometer is disconnected or nonfunctional. Where an odometer has been repaired and is unable to register the original mileage, a notice must be placed on the left door frame specifying the mileage prior to the repair or replacement.

In addition, the Secretary of Transportation is required to prescribe rules requiring any person transferring title of a vehicle to give written disclosure of the cumulative mileage registered on the odometer, or a statement that the actual mileage is unknown if the odometer reading is different from the actual number of miles the vehicle has travelled.

Private citizens can enforce their rights through private triple damage actions which, when successful, carry a minimum $1,500 recovery as well as the costs and reasonable attorneys' fees for the litigation. State Attorneys General may also enforce the statute as well as seek injunctive relief against violators. All of these actions may be brought in the federal court. Finally, the federal government backed by its investigatory authority, can seek civil penalties of $1,000 per violation up to $100,000, criminal fines and sentences against corporate officers, and injunctive relief. To assist in enforcing the law, the Secretary of Transportation is authorized to conduct any inspections or investigations necessary, to hold hearings and subpoena information, require answers to questions and the appearance of witnesses. In addition, the law does not annul, alter or affect the law of any state with regard to

odometer tampering except to the extent that the state laws are inconsistent with the federal law, and then only to the extent of the inconsistency.

This odometer statute is one of the best consumer statutes ever enacted by the Congress because it authorizes a wide variety of persons, from consumers who have been defrauded, to State and Federal officials, to enforce the law, and it encourages them to do so with payment of costs, and imposition of harsh penalties.

However, we believe that S. 1407, introduced by Senator Exon is an important addition to the existing law because the regulations issued under Section 408(a) for disclosure of odometer mileage have been insufficient. The Section 408 regulations require any transferor of a motor vehicle title to furnish the transferee with a written statement of the odometer reading and related information, but do not require that this information be contained on the vehicle title. However, for years NHTSA has urged the states to require it on the title and 44 states now comply. Nevertheless, as long as any states permit "washing" of titles without odometer readings, odometer fraud will continue to flourish.

Thus, S. 1407 is an important step to close the current loopholes in certain state laws. It will make it harder to sell a vehicle with a rolled back odometer, although this could still occur if there is a direct conspiracy between the seller and the buyer of a vehicle, or fraudulent manufacture of titles. I would like to mention that we do see several technical problems with the manner in which the bill is drafted and would appreciate the opportunity to make more detailed suggestions to the committee staff, particularly with regard to the language on interstate commerce, and the possible problems with including the vehicle registration card in the bill.

We also believe that to fully deter odometer fraud, odometers in motor vehicles should be designed to permit the car owner to discern if it has been tampered with in any way. In December 1976, NHTSA proposed a safety standard requiring that vehicle odometers be designed so that they are tamper resistant and indicate when the mileage has exceeded 100,000 miles. In 1978, a final standard was issued to take effect in September 1981. The standard allowed tamper resistance to be provided in any one of a number of ways. Odometers could be designed so that:

A. If reversal is attempted, the odometer breaks so as to impair the recording of any distance travel by the vehicle.

B. An encapsulation must be pierced or broken in order to get the odometer to reverse.

C. Some definitive indication of reversal such as the appearance of an otherwise hidden part must be provided when reversal is attempted.

D. Each number of the 10,000 miles/kilometers wheel is marked as/or after it disappears from view so that the mark becomes visible if the wheel is reversed.

By providing manufacturers with this flexibility, the agency attempted to permit them to use whichever system best accommodated their old odometer designs and thus to keep the cost of providing this essential consumer protection at an absolute minimal cost. In addition, the agency required that replacement odometers be colored to differentiate them from original equipment odometers so that new replacement odometers with low distance readings could not be substituted for original equipment odometers with high mileage readings.

However, shortly before this reasonable standard was due to take effect, the Reagan administration proposed first delaying the effective date and then eliminating the standard because of objections from General Motors and Ford primarily. The agency justified the revocation on February 18, 1982, on the basis that the "agency has determined that the current requirements are not yielding and cannot be expected to yield significant safety benefits." The agency also rationalized its action on the basis that "refraining from regulation will facilitate experimentation by manufacturers in providing and thus possibly providing significant safety benefits.

NHTSA promised that it will "continue to monitor manufacturer development programs and the effectiveness of anti-tampering features voluntarily adopted by manufacturers." The agency indicated that if odometer features are developed to provide a significant safety benefit, it would reconsider the issuance of federal standard.

In a most unusual statement, the agency also said "in revoking this standard, NHTSA intends that every level of government be preempted from establishing similar requirements. The agency believes that regulation of speedometers and odometers is not appropriate at this time at any level based on the absence of data indicating regulatory methodology exists which would in fact yield significant safety benefits. Contrary regulatory decisions at other levels of government would negate the agency's exercise of discretion and undermine the Congressional goal of a uniform national standard." Thus, while refusing to set minimum anti-tampering requirements, the agency at the same time claims to preempt any state or local gov-

ernments from issuing its own protective requirements. While it is unlikely that any court would uphold NHTSA's authority to enforce this prohibition, its very existence may be inhibiting state action. One must presume that NHTSA asserted this authority at the request of manufacturers who, while they don't like federal requirements, don't like state requirements either.

In revoking the standard, the agency argued that while it never disputed that mileage is a factor that may influence some drivers to take preventive maintenance measures, "the primary issue is whether other factors, such as vehicle appearance and performance, play a more important role in influencing drivers regarding vehicle systems that have a direct relationship to safety." This obscure reasoning was justified by an analysis of a tri-level study of the causes of accidents which found that deterioration in brake performance or tire tread depth, for example, which are readily apparent, are more likely to alert the driver to safety related problems than would the mileage of the vehicle. Thus, the agency concluded that the tri-level study does not support the conclusion that the role of mileage and the odometer in alerting drivers to potential safety problems is important. But this reasoning ignores the economics of consumer purchasing and the allocation of limited resources to the cost of purchasing a new car with the expectation of avoiding the necessity of repair.

The agency, however, was quite concerned about the cost to manufacturers, and estimated they would save about $11 million in capital investment and $9.8 million in variable costs if they did not install odometers meeting the full anti-tampering requirements in the absence of the standard. These figures are exaggerated because GM had already made its capital investment to meet the standard and Ford had done so in part. In either case, they are peanuts compared to the cost of the consumer fraud.

Without the tamper-resistant, tamper-notification federal odometer standard it is not possible for consumers, in most cases, to utilize the excellent enforcement provisions of Title IV of the Consumer Information and Cost Savings Act. They can only enforce the law if they have evidence of the fraud and a capability to discern the problem rapidly to establish a trail of evidence to the perpetrator.

This standard was supported by police department and other law enforcement agencies as well as by the National Auto Dealers Association and numerous consumers. Unfortunately, however, the major manufacturers persuaded this administration that it would not provide safety benefits and was too costly for the industry to implement. The total cost to consumers was estimated at less than $1 per car.

We urge the Committee to consider adding an additional section to its bill which would require that odometers in new cars be tamper-resistant as defined in the agency's Standard 127 prior to its revocation and that replacement odometers be differentiated by color or other characteristics from original equipment odometers so that fraud can be discerned.

I would now like to ask Mr. William Schultz to comment on the odometer fraud litigation he is handling on behalf of Public Citizen.

Public Citizen appreciates the opportunity to testify on this important consumer issue before the subcommittee. We urge rapid approval of S. 1407 with the suggested amendments.

Senator DANFORTH. Thank you very much.

[Whereupon, at 10:47 a.m., the hearing was adjourned.]

[The following information was subsequently received for the record:]

AMERICAN ASSOCIATION OF MOTOR VEHICEL ADMINISTRATORS,
Washington, D.C., April 23, 1984.

Hon. JOHN DANFORTH,
Chairman, Subcommittee on Surface Transportation, Room A709, Immigration Building, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for this opportunity to submit for the record the AAMVA's views on S. 1407, legislation to protect consumers from odometer fraud.

The AAMVA, as the association of U.S. state and Canadian provincial officials responsible for the administration and enforcement of motor vehicle and traffic laws, has long been concerned with the serious problem of odometer fraud. For several years, our Association's *Policy Positions* has called for implementation, by member-jurisdictions, of odometer security procedures; and has encouraged the jurisdictions to exchange information relating to odometer violations. At the AAMVA International Conference last year, a resolution was passed urging all jurisdictions to record current odometer mileage readings on all title documents.

Additionally, the AAMVA is a member of the Ad Hoc Committee for the Elimination of Odometer Tampering. This is a broad-based group consisting of representatives of automobile dealers, auctioneers, manufacturers, renters and leasers, and state and federal government agencies. The Ad Hoc Committee is in the process of developing what we believe will be effective and workable solutions to the problems of odometer fraud.

Mr. Chairman, we believe that Congress would be making a serious mistake by rushing into law a scheme which has not been fully evaluated by affected parties. Similarly, we would hope that Congress would provide the Ad Hoc Committee ample opportunity to develop solutions which may avoid the need for federal intervention.

In regard to S. 1407, specifically, we are very much concerned by the concept of mingling odometer security measures with state registration procedures.

To begin with, we do not believe that statutory authority exists which would allow the federal government to restrict state's ability to register vehicles. We are confident that states would vigorously oppose any such intrusion of federal control in this area.

However, were such authority to be established, and exercised as provided by S. 1407, significant administrative burdens and costs would be imposed on the states. Presumably, each jurisdiction would need to capture and store the odometer reading from each registration application into approximately 110 million passenger car records.

Beyond this, states utilize a variety of registration systems. For example, in some states, such as Minnesota, no "registration card" is issued at all, but simply a non-negotiable receipt which is not required, nor is it necessarily involved, in the registration process. In many states, registration renewal is accomplished by mail. Educating the public in the need to include the odometer reading on the application, and necessary follow-up to secure missing readings would be costly and time-consuming.

Perhaps most importantly, there is no evidence of which we are aware to suggest that the inclusion of odometer information in the registration process would have any positive effect on reducing odometer fraud. The bill itself does little to indicate how this might be accomplished. Presumably, in order for such a system to be meaningful, someone would need to audit and analyze registration records on a year-to-year basis, and compare the readings with those on titles involved in transfers. This, of course, would involve additional costs.

Mr. Chairman, simply put, we do not see how the inclusion of odometer readings on registration cards is going to solve the problem of odometer fraud. Whatever small positive effect it might have on this problem cannot, in our view, be justified by the costs.

Sincerely,

DONALD J. BARDELL, *Executive Director.*

NATIONAL INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION,
Raleigh, N.C., April 24, 1984.

Hon. JOHN C. DANFORTH,
Chairman, Surface Transportation Subcommittee, 497 Russell Senate Office Building, Washington, D.C.

DEAR SENATOR DANFORTH: Please accept our sincere apologies for not being in attendance at your April 12 meeting concerning S. 1407. However, our association did not receive notice of the meeting until that morning. Our attendance would perhaps have been helpful in that we have been involved in the fight to stop odometer tampering much longer than any other group or agency.

The eight thousand plus members of the National Independent Automobile Dealers Association would like to go on record as supporting S. 1407.

I know your time is limited but I believe it would help to understand the situation we're facing if we did a little reviewing.

In 1972, a federal law passed that made it a federal offense to roll back or tamper with odometers. Previous to this act, the only enforcement was by an occasional State Attorney General, or even rarer, civil court action by an individual. The practice of rolling back odometers was commonplace. It was part of the business. The new federal law, however, carried jail sentences, large fines and the promise of ruinous publicity for an offending dealer. The law proved to be an immediate success. Literally all tampering stopped. Everyone had genuine fear in their hearts. The business changed overnight. High-mileage cars plummeted, while low-mileage cars

rose to unbelievable highs. Consumers suddenly had a choice they never had before. Slowly we began to find out that high-mileage cars could be marketed profitably because the price was commensurate with the miles.

We all enjoyed some good years. Consumers were happy with the choices they had. Dealers who had never liked the practice of rolling the odometers back, but had been forced to by market pressures, were delighted to see that all segments of the market could be marketed profitably. Of course, many consumers responded to the changes by opting for a brand new car, resulting in record sales for our new-car counterparts. In short, the law was a good one and everyone benefitted from it.

However, it was not to last. Slowly a very few unscrupulous people (individuals and dealers) began setting odometers back. Nothing happened, so a few more, then a few more; still, nothing happened, Nothing, that is, except that these few began making an unbelievable amount of money. The ironic part was that most of these dealers were very small operators who had nothing to lose because they weren't doing very well in a fair maket where success depended on marketing skills. But after three or four years of cheating, they emerged as extremely wealthy people. The lure of getting rich quick has brought even more such type of people into the industry and the numbers increase every year.

There is another aspect to the problem that must be considered—odometer tampering is a major contributing factor in declining new-car sales. It's almost simplistic; what incentive is there for a consumer to spend $12,000 to $14,000 for a new car when there are so many "low mileage cream puffs" as an alternative choice. Low new-car deliveries cause declines in steel, rubber, plastic and other related industries. These declines have a domino effect in that they create slowdowns in home building, and many other areas that touch our lives daily.

I'm confident that you will get some opposition from title manufacturers who do not produce the type S. 1407 stipulates and perhaps even Clerks of Court and other Bureau of Motor Vehicles representatives. However, I believe that any inconveniences or even hardships this bill may cause any small segments will be grossly overshadowed by the benefits it will bring to the vast majority who are being adversely affected when odometer tampering is allowed to exist.

I believe this bill, as written, will establish a paper trail that will be most effective in tracing cars that are presently being titled in as many as five states in as few as seven days, making detection improbable. They are, of course, being titled in those states that have steadfastly ignored our repeated requests to voluntarily include odometer readings on their titles. Several states have made it clear that they have no intention of voluntarily complying. Their reasons vary, but it usually comes out something like this: "Our department is underfunded and understaffed; we simply don't have enough people or machines to add more information." In any event, it's clear that effective enforcement will continue to be a joke as long as even one single state fails to comply. It's equally clear that nothing short of a federal mandate will remedy the situation.

S. 1407 is not just another unnecessary piece of legislation containing a lot of red tape. It is a vital bill designed to enhance our American System of checks and balances.

Please accept this letter as your support of S. 1407 from the eight thousand plus members of the National Independent Automobile Dealers Association.

Sincerely,

CHARLES NICHOLSON,
Chairman, NIADA Odometer Committee.

○